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federal register

TUESDAY, FEBRUARY 13, 1979

highlights

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
—	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

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Title 3—
The President

Proclamation 4639 of February 9, 1979

National Defense Transportation Day and National Transportation Week, 1979

By the President of the United States of America

A Proclamation

Transportation is a vital force in our society. It moves the Nation's goods, delivers the products of our farms and factories, and enables us to live and work where we choose and travel where we please. Transportation enriches our economy and strengthens our defense.

Because of transportation's importance, and to encourage greater safety and efficiency in the ways we develop and use it, Congress has requested the President to proclaim annually the third Friday in May as National Defense Transportation Day, and the week in which that day falls as National Transportation Week (71 Stat. 30, 36 U.S.C. 160; 76 Stat. 69, 36 U.S.C. 166).

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, designate Friday, May 18, 1979, as National Defense Transportation Day, and the week beginning May 13, 1979, as National Transportation Week.

I urge the Governors of our States and other appropriate officials, organizations concerned with transportation, and the people of the United States to join with the Department of Transportation in observing this day and week.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of February, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

[FR Doc. 79-4932
Filed 2-12-79; 11:41 am]

Billing code 3195-01-M

rules and regulations

[6325-01-10]

Title 5—Administrative Personnel

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: This amendment corrects the document published in FR 1360 dated January 5, 1979, for a position in the Department of Energy which was erroneously listed.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(a)(2) is amended and (a)(8) is corrected as set out below:

§ 213.3331 Department of Energy.

(a) *Office of the Secretary.* * * *

(2) Two Confidential Secretaries, one Motor Vehicle Operator, and one Executive Assistant to the Deputy Secretary. * * *

(8) One Confidential Assistant (Secretary) to the Deputy Under Secretary.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

OFFICE OF PERSONNEL MANAGEMENT
JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-4690 Filed 2-12-79; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment reflects that the position, Confidential Assistant to the Administrator, Bonneville Power Administration, is transferred from the Office of the Secretary to the organization headed by the Assistant Secretary for Resource Applications. This position was originally excepted under Schedule C at the Department of Interior and transferred to the Department of Energy on September 30, 1977. This position was never published in the FEDERAL REGISTER under the Department of Energy prior to this time.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(j)(3) is added as set out below:

§ 213.3331 Department of Energy.

* * * * *

(j) *Office of the Assistant Secretary for Resource Applications.* * *

(3) One Confidential Assistant to the Administrator, Bonneville Power Administration.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

OFFICE OF PERSONNEL MANAGEMENT
JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-4689 Filed 2-12-79; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

International Trade Commission, Civil Aeronautics Board, Agency for International Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the International Trade Commission, Civil Aeronautics Board and the Agency for International Development because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATES: International Trade Commission—January 24, 1979; Civil Aeronautics Board and Agency for International Development—January 26, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3339(d) is amended and 213.3340(j) and 213.3368(a)(6) are added as set out below:

§ 213.3339 U.S. International Trade Commission.

* * * * *

(d) One Staff Assistant (Legal), two Staff Assistants, and one Secretary (Steno) to a Commissioner.

* * * * *

§ 213.3340 Civil Aeronautics Board.

* * * * *

(j) One Program Analysis Officer to the Director, Bureau of Consumer Protection.

* * * * *

§ 213.3368 Agency for International Development.

(a) *Office of the Administrator.* * * *

(6) One Special Assistant to the Director, Office of Public Affairs.

(5 USC 3301, 3302, EO 10577, 3 CFR 1954-1958 Comp., p. 218)

OFFICE OF PERSONNEL MANAGEMENT
JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-4688 Filed 2-12-79; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Merit Systems Protection Board

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment changes the titles of certain positions at the Merit Systems Protection Board from two Special Assistants to the Chairperson to two Attorney-Advisors (General) to the Chairperson and from Administrative Assistant to the Chairperson to Staff Assistant (Steno) to the Chairperson. These title changes more appropriately reflect the duties of the positions.

EFFECTIVE DATES: Attorney-Advisors (General)—January 29, 1979; Administrative Assistant (Steno)—February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3390(a) is amended as set out below:

§ 213.3390 Merit Systems Protection Board.

(a) Two Attorney-Advisors (General) and one Staff Assistant (Steno) to the Chairperson.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

OFFICE OF PERSONNEL MANAGEMENT,
JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-4687 Filed 2-12-79; 8:45 am]

[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 911—LIMES GROWN IN FLORIDA

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Subpart—Rules and Regulations

PUBLIC MEMBER ELIGIBILITY REQUIREMENTS AND NOMINATING PROCEDURES

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This action establishes eligibility requirements and procedures for nominating a public member and alternate to serve on the Florida Lime Administrative Committee established under Marketing Order No. 911, and the Avocado Administrative Committee established under Marketing Order No. 915.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the Marketing Order Nos. 911 and 915, each as amended (7 CFR Part 911; 43 FR 39319), and (7 CFR Part 915; 43 FR 39321), regulating the handling of limes and avocados grown in Florida, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Florida Lime Administrative Committee, and the Avocado Administrative Committee, it is found that amendments of Subpart—Rules and Regulations (§§ 911.110 *et seq.*), and (§§ 915.110 *et seq.*), as hereafter set forth, are in accordance with the provisions of these orders and will tend to effectuate the declared policy of the act. This action has not been determined significant under the USDA criteria for implementing Executive Order 12044.

Sections 911.20 and 915.20, of these amended orders provide that each of these committees may be increased by one public member and alternate nominated by the respective committees and selected by the Secretary. These actions further provide that these committees, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating these public members and alternates.

These eligibiliy requirements specify that the public member shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing or marketing of the particular fruit covered by the marketing order under which they would be nominated. These provisions also provide that public members and alternates must be residents of the production area, and that they should attend committee activities regularly and familiarize themselves with the background and economics of the particular fruit industry that the committee, on which they are selected to serve, represents. These provisions further specify that the public members and alternates shall serve for a one-year term of office on each of these committees, which would coincide with the term of office of grower and handler members on these committees.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which these actions are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on this matter at an open meeting. It is necessary to effectuate the declared purposes of the act to make these actions effective when specified, since they establish eligibility requirements for a public member and alternate member on each committee, and these committees plan to meet February 14, 1979, to consider nomination of the public member and alternate in accordance with prescribed procedures.

Accordingly, said rules and regulations are hereby amended by adding new § 911.160 and § 915.160, reading as follows:

§ 911.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alternate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of limes.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the lime industry.

(c) The public member and alternate member shall be a resident of the production area.

(d) The public member and alternate member should be nominated by the Florida Lime Administrative Committee, and shall serve a one-year term which coincides with the term of the producer and handler members of the committee.

§ 915.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alternate member candidates shall not represent an agricultural interest, and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of avocados.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the avocado industry.

(c) The public member and alternate member shall be a resident of the production area.

(d) The public member and alternate member should be nominated by the Avocado Administrative Committee,

and shall serve a one-year term which coincides with the term of the producer and handler members of the committee.

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

Dated: February 8, 1979.

WILLIAM J. HIGGINS,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-4798 Filed 2-12-79; 8:45 am]

[3410-05-M]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., Grain Reserve Program Supplement]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops; Corrections

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correction of final rule.

SUMMARY: This action corrects a previous FEDERAL REGISTER document (FR Doc. 78-11194), beginning at page 17461 of the issue for Tuesday, April 25, 1978, which provided the General Regulations Governing the Grain Reserve Program for the 1976 and Subsequent Crops. Subdivisions (i) and (ii) of paragraph 1421.543 (b) were incorrectly cited which necessitates this correction.

EFFECTIVE DATE: April 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Harold L. Jamison, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7973.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation issued a final rule with an effective date of April 25, 1978. Subdivisions of § 1421.543 (b) were incorrectly cited.

In FR Doc. 78-11194 appearing at pages 17463 and 17464 in the FEDERAL REGISTER of April 25, 1978, subdivisions (i) and (ii) of § 1421.543 (b) are corrected to read (1) and (2), respectively, where they appear.

Dated: February 5, 1979.

S. N. SMITH,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-4699 Filed 2-12-79; 8:45 am]

[3410-37-M]

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE (FRUIT AND VEGETABLE QUALITY DIVISION), DEPARTMENT OF AGRICULTURE

SUBCHAPTER E—EXPORT AND DOMESTIC CONSUMPTION PROGRAMS

PART 2880—FRESH IRISH POTATOES

Subpart—Fresh Irish Potatoes—Livestock Feed Diversion Program

METHODS OF FEEDING

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends that portion of the regulations dealing with payments by USDA to Irish potato growers participating in the Livestock Feed Diversion Program. Rather than make full payment after determining adequate livestock pasturing has taken place, USDA will now make 50 percent of the payment prior to such determination. This action is necessary to relieve economic pressures which diverters are encountering while meeting Federal requirements for the Livestock Feed Diversion Program.

EFFECTIVE DATE: The date of this amendment, February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. D. A. Thibeault, Chief, Commodity Procurement Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2781.

SUPPLEMENTARY INFORMATION: A final rulemaking notice was published in the November 24, 1978, FEDERAL REGISTER (43 FR 54921-54923) which set forth the terms and conditions of the Irish potato diversion program. Among other things, the rule stated the manner of payment to diverters by USDA which was to be made after USDA determined that adequate pasturing of livestock took place. It has been brought to the Department's attention that this manner of payment has caused economic hardship upon diverters due to the costs involved in fulfilling Federal requirements for the potato diversion program. Therefore, the Acting Administrator is amending § 2880.13(c)(3) of the regulations (7 CFR 2880.13(c)(3)) to state that only 50 percent of payment will be held by USDA until adequate livestock pasturing has taken place.

Dr. D. L. Houston, Acting Administrator, Food Safety and Quality Service, has determined that, because of these circumstances, this is an emergency situation requiring immediate program action without a notice and comment period, that compliance with the notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest, and in accordance with the provisions of Executive Order 12044 (43 FR 12661, March 24, 1978), that it is not possible to publish these regulations in proposed form and allow 60 days for public comment.

FINAL RULE

Section 2880.13(c)(3) is amended to read as follows:

§ 2880.13 Methods of feeding.

* * * * *

(c) * * *

(3) Diversion payments will be computed at the rate in effect at the time of initial processing but 50 percent of payment to diverters by USDA will not be made until it is determined by USDA that adequate pasturing by livestock has taken place.

(Sec. 32, 49 Stat. 774, as amended (7 U.S.C. 612c))

An approved Final Impact Statement has been prepared and is available from Mr. D. A. Thibeault, Chief, Commodity Procurement Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2781.

Done at Washington, D.C., on February 8, 1979.

D. L. HOUSTON,
Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-4753 Filed 2-12-79; 8:45 am]

[3410-37-M]

Title 9—Animals and Animal Products

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE, MEAT AND POULTRY PRODUCTS INSPECTION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS, REINSPECTION AND PREPARATION OF PRODUCTS

Acid Producing Micro-Organisms in Meat Products for Nitrite Dissipation

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Federal meat inspection regulations by allowing the use of acid producing micro-organisms such as lactobacilli, which are naturally present on the surface of meat and meat products as well as other foods, in the processing of bacon for the purpose of lowering the pH in order to dissipate residual nitrite and reduce nitrosamine formation.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Irwin Fried, Acting Director, Product Labels and Standards Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 202, Annex Building, Washington, DC 20250, Area Code (202) 447-6042.

SUPPLEMENTARY INFORMATION: Acid producing micro-organisms such as lactobacilli are naturally present on the surface of all meats as well as other food products. They have also been deliberately added to a wide variety of foods in quantities and under conditions where they outgrow other organisms and produce acid flavors that are desirable to consumers as well as giving added protection against spoilage. Examples of such products are cheeses, yogurt, summer sausage, lebanon bologna, and a wide variety of dry sausages.

The safety and suitability of these micro-organisms have been established and their use approved under the Federal Meat Inspection Act in dry and semi-dry sausages (9 CFR 318.7). They are also on the list prepared by the Federal Food and Drug Administration of substances generally recognized as safe. An application has been made to the Department to permit the use of these harmless bacteria lactic acid starter cultures of the Lactobacillus and Pediococcus types in bacon. The request is based upon recent experiments showing that the amount of acid generated by the culture rapidly lowers the pH of the bacon. The amount of residual nitrite is dissipated by the increased acid, and the nitrosamine formation is sharply reduced without increasing the risk of botulism. There is a correlation between the accounts of residual nitrite and the formulation of nitrosamines which have been found to be carcinogenic in laboratory animals.

The Secretary of Agriculture has expressed, as a goal of the Department, the elimination of nitrosamines from bacon, thus eliminating the risk of adulterated product reaching consumers and affording consumers the maximum protection possible. Since starter cultures of lactobacilli are now approved for use in many foods and their safety has been established, and since their use in bacon promises to further lower or eliminate nitrosamines, thereby adding an additional safety factor for consumers, Donald L. Houston, Acting Administrator, Food Safety and Quality Service, has determined that their use should be permitted in bacon and that this added factor of safety should be made available immediately to accomplish its intended purpose in the public interest.

Therefore, the Federal meat inspection regulations are amended as set forth below.

§ 318.7 [Amended]

In the table in § 318.7(c)(4) (9 CFR 318.7(c)(4)) under the "Class of substance" "Flavoring agents; protectors and developers," the "Substance" column reading "Harmless bacteria starters of the acidophilus type, lactic acid starter or culture of *Pediococcus cere visiae*" is amended to read as follows:

Class of substance	Substance	Purpose	Products	Amount
•	•	•	•	•
Flavoring agents; protectors and developers.	Harmless bacteria starters of the acidophilus type, lactic acid starter or culture of *Pediococcus cere visiae.*	To develop flavor.	Dry sausage, pork roll, thuringer, lebanon bologna, cervelat, and salami.	0.5 percent.
		To dissipate nitrite.	Bacon	Sufficient for purpose.
•	•	•	•	•

(Sec. 21, 34 Stat. 1264, 21 U.S.C. 621; 42 FR 35625, 35626, 35631)

This final rulemaking is being published under emergency procedures as authorized by Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Donald L. Houston, Acting Administrator, Food Safety and Quality Service, that the emergency nature of this rule warrants the publication without waiting for public comment. This amendment, as well as the complete regulation, will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955. The review will include preparation of an Impact Analysis Statement which will be available from Mr. Fried, Acting Director, Product Labels and Standards Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 202, Annex Building, Washington, DC 20250.

Done at Washington, DC, on February 9, 1979.

DONALD L. HOUSTON,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 79-4773 Filed 2-12-79; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

[Docket No. ERA-R-79-5]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Amendment to Allocated Crude Oil Pricing Rule Effective February 1, 1979

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule and notice of continuation of rulemaking.

SUMMARY: The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE")

hereby amends, on an emergency basis, the Mandatory Petroleum Price Regulations in Subpart F of Part 212 by the addition of Special Rule No. 2 to the Appendix to that subpart. Special Rule No. 2 provides for a change in the method of pricing allocated crude oil for deliveries beginning February 1, 1979 pursuant to the Mandatory Crude Oil Allocation Program (the "buy/sell program"), to take into account the five percent price increase announced by the Organization of Petroleum Exporting Countries effective January 1, 1979. This Special Rule is effective February 1, 1979 because any delay in its effective date would result in sale prices for refiner-sellers that would be unrepresentatively low based on their current landed costs, and would also result in feedstock cost disparities among small refiners, depending on their relative access to allocated crude oil.

This notice also continues the present rulemaking and requests public comments on a proposal to adopt the emergency rule or a variation thereof as a permanent amendment to the buy/sell program pricing regulations.

DATES: This final rule is effective February 1, 1979. A hearing on this rule and the proposal to adopt a permanent rule will be held on March 20, 1979 in Washington, D.C. Written comments on the final rule and on the further proposed amendment must be received by April 13, 1979. Requests to speak must be received by March 9, 1979. Copies of oral statements must be received by March 19, 1979.

ADDRESSES: All comments, copies of oral statements and requests to speak to: Public Hearing Management, ERA Docket No. ERA-R-79-5, Department of Energy, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. Hearing: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2222A, 2000 M Street, NW., Washington, D.C. 20461 (202) 254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B110, 2000 M Street, NW., Washington, D.C. 20461 (202) 634-2170.

Robert J. Kane (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2314, 2000 M Street, NW., Washington, D.C. 20461 (202) 254-7200.

Robert G. Bidwell, Jr. (Fuels Regulations), Economic Regulatory Administration, Room 6128, 2000 M Street, NW., Washington, D.C. 20461 (202) 254-8464.

Samuel M. Bradley (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6739.

SUPPLEMENTARY INFORMATION:

I. Background
II. Special Rule No. 2 to Subpart F, Part 212
III. Request for Comments on Further Amendments to Section 212.94
IV. Waivers of Comment Periods
V. Comment Procedures
A. Written Comments
B. Public Hearing

I. Background

At its conference held in Abu Dhabi, United Arab Emirates, from December 16 to 18, 1978, the Organization of Petroleum Exporting Countries (OPEC) decided to increase the price of the marker crude from $12.70 per barrel to $13.34 per barrel or 5%, as of January 1, 1979. OPEC also announced that three other increases will be forthcoming on April 1, 1979 (3.809%), July 1, 1974 (2.295%), and October 1, 1979 (2.691%), respectively. If all of these price increases are given effect, in October 1979 the official price of marker crude oil will be approximately $14.54 per barrel, or approximately 14.5% higher than the December 1978 official marker crude oil price per barrel. OPEC members indicated that the price of all other crudes will be increased accordingly. The OPEC participants further announced that high quality crude oils will be offered at premiums over the newly announced increases for the marker crude oil.

Crude oil sold pursuant to the buy/sell program set forth in § 211.65 of the Mandatory Petroleum Allocation Regulations is currently required (under § 212.94 of the Mandatory Petroleum Price Regulations) to be sold at not more than the weighted average per barrel landed cost to the seller of its imported crude oil, less the average per barrel cost of transporting imported crude oil to the seller's refineries, plus a handling fee and certain quality and transportation adjustments. The period over which the seller's weighted average landed cost is to be determined is the three-month period ending with the month in which the sale is made. In light of the OPEC price increase effective January 1, 1979, if no change were made in this rule, the lower prices prevailing during the months prior to February 1979, (when sellers will begin to receive deliveries of imported crude oil reflecting the OPEC price increase) would result in a sales price for refiner-sellers that would be significantly below the world market prices for imported crude oil. This would cause certain distortions that are contrary to the intended objectives of the pricing provisions of the buy/sell program at the time they were adopted. For example, it would have the potential for placing small refiners that are not eligible to purchase allocated crude oil under the buy/sell program at a competitive disadvantage relative to other small refiners that are able to purchase under the program significant volumes of the lower-priced allocated crude oil. It could also result in refiner-sellers increasing their prices for products subject to price controls, since the net effect of requiring them to sell crude oil at prices substantially below replacement costs is to increase the amount of crude oil costs they can pass through in their own product prices. And, finally, requiring refiner-sellers to sell at prices substantially below replacement costs of crude oil creates a major disincentive for refiners to participate willingly in the program. Although the program is mandatory, past experience has demonstrated that the program operates efficiently and smoothly only if it is fair to all parties concerned.

II. Special Rule No. 2 to Subpart F, Part 212

For these reasons, we are adopting on an emergency basis Special Rule No. 2 to Subpart F, Part 212. Special Rule No. 2 is essentially identical to Special Rule No. 1 to Subpart F, which the Federal Energy Administration (FEA) adopted on an emergency basis two years ago to take account of the OPEC price increase effective January 1, 1977 (42 FR 1036, January 5, 1977). Thus, Special Rule No. 2 provides that, effective for the month of February 1979, each refiner-seller's sales of allocated crude oil must be priced at not higher than the weighted average per barrel landed cost of imported crude oil for that particular sulfur content category delivered to that refiner-seller in the month of delivery to the buyer (plus the usual handling fee and transportation and quality adjustments currently set out in § 212.94). Thus, for example, in February 1979, the maximum selling price for refiner-sellers will be computed on the basis of the weighted average per barrel landed cost of imported crude oil for the particular sulfur content category concerned delivered to refiner-sellers in the month of February 1979.

III. Request for Comments on Further Amendments to § 212.94

In light of the probability of further scheduled OPEC increase in 1979 and a general tightening of world crude oil supplies that may cause imported crude oil prices to fluctuate significantly, we have tentatively concluded that the provisions of § 212.94(b)(1) should be amended on a permanent

basis to avoid the necessity of emergency amendments each time there is a sudden increase in imported crude oil prices. Accordingly, we invite comments through April 13, 1979 on the alternative amendments to § 212.94 set forth below. You also are encouraged to offer other alternative provisions which you believe would be preferable to those discussed below. In the event we determine on the basis of the comments received in this proceeding to adopt one of these alternatives (or a variation thereof), we intend to adopt appropriate regulatory language amending the current provisions of § 212.94(b)(1). These alternatives are as follows:

a. Amend § 212.94(b)(1) to specify a one-month period for calculation of refiner-seller' prices, as provided under the special rule adopted today.

b. Amend § 212.94(b)(1) to specify a two-month period for calculation of refiner-sellers' prices.

c. Amend § 212.94(b)(1) to permit the Administrator of ERA to determine by notice that there has been a significant and sudden increase in imported crude oil prices and the length of the period to be used in calculating a refiner-sellers' weighted average per barrel landed cost of imported crude oil.

d. Amend § 212.94(b)(1) to permit the Administrator of ERA to establish on a monthly basis standard per barrel prices for high and low sulfur crude oil for all refiner-sellers' on the basis of major refiners' weighted average per barrel landed costs of high and low sulfur crude oil in the preceding month as reported to ERA.

It is our intention to make a decision on whether to make a permanent change in the pricing provisions by May 1979. In the meantime, the emergency rule adopted today will remain in effect until a decision on a permanent rule is announced.

IV. Waivers of Comment Periods

Section 501(e) of the Department of Energy Organization Act (DOE Act,' Pub. L. 95-91) allows waiver of the requirements of section 501(b)(1) of the DOE Act as to notice and opportunity to comment prior to promulgation of regulations where strict compliance with such requirements would cause serious harm or injury to the public health, safety, or welfare. We have determined for the reasons outlined above that compliance with the requirements of section 501(b)(1) of the DOE Act would cause serious price distortions among refiners, would frustrate the purpose of the pricing provisions of the buy/sell program, and would cause serious harm and injury to the public welfare. In addition, providing the normal public comment period before this rule is effective would totally frustrate the purpose of the special rule, since the rationale for adoption of the rule requires that the rule be made effective immediately. Accordingly, these requirements are waived and the amendment adopted hereby is made effective February 1, 1979, prior to opportunity to comment thereon.

The 60-day public comment period required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 24, 1978), and DOE's implementing Order 2030 (44 FR 1040, January 3, 1979) has been waived for the same reasons by the Deputy Secretary.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are soliciting public comments and will hold a public hearing as outlined below on both the emergency rule adopted today and the proposal to adopt a permanent rule. Based on the comments received, we will determine whether revisions to the amendment adopted today, retroactive to the effective date of February 1, 1979, are needed.

V. Comment Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views, or arguments with respect to the special rule adopted today and on the proposals outlined in Section III of this Notice by no later than April 13, 1979. Comments should be identified on the outside of the envelope and on the documents submitted with the designation "Special Rule No. 2" or "Further Amendments to Buy/Sell Price Rule", as appropriate. Fifteen copies should be submitted. All comments that we receive will be available for public inspection in the DOE freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

You should identify separately any information or data you consider to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. *Procedure to request participation.* The time and place for the public hearing are indicated in the "ADDRESSES" and "DATES" sections of this Notice. If necessary to present all testimony, the public hearing will be continued to 9:30 a.m. of the first business day following the hearing date shown above.

You may make a written request for an opportunity to make an oral presentation at the hearing. The request should contain a phone number where you may be contacted through the day before the hearing.

We will notify each person selected to be heard before 4:30 p.m., March 13, 1979. Persons scheduled to speak at the hearing must send 50 copies of their statement to the address indicated in the "ADDRESSES" section of this notice by 4:30 p.m., March 19, 1979.

2. *Conduct of the hearing.* We reserve the right to limit the number of persons to be heard at the hearing if necessary in the interests of time, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing, which will not be a judicial or evidentiary-type hearing. Questions may be asked only by those officials conducting the hearing. Each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing. Such questions must be submitted to the same address indicated above for requests to speak, three days before the hearing. In addition, if you decide at a hearing to ask a question, you may submit the question, in writing, to the presiding officer. He or she will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and we will retain the entire record of the hearing, including the transcript, which will be made available for inspection at the DOD Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

In the event that it becomes necessary for us to cancel the hearing, we will make every effort to publish advance notice in the Federal Register of such cancellation. Moreover, we will notify all persons scheduled to testify

at the hearing. However, it is not possible to give actual notice of cancellations or schedule changes to persons not identified to us as participants. Accordingly, persons desiring to attend the hearing are advised to contact us on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

Executive Order 12044 (43 FR 12661, March 24, 1978) requires that a regulatory analysis be prepared for all significant regulations which will result in "an annual effect on the economy of $100 million or more" or will result in "a major increase in costs or prices for individual industries, levels of government or geographic regions." This emergency special rule is designed to prevent crude oil price discrepancies which would occur if the present price rule in § 212.94 was used in buy/sell transactions for the next few months. In this regard, if this special rule were not adopted and § 212.94 continued to govern buy/sell transactions, the increased costs to refiner-sellers for the three months in question would be approximately $1.6 million. Inasmuch as this emergency rule merely averts these inequitable cost increases to refiner-sellers, we have determined that none of the threshold criteria for the preparation of a regulatory analysis have been met and therefore a regulatory analysis is not required.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974 (FEAA, Pub. L. 93-275), a copy of this emergency amendment was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the proposal on the quality of the environment. The Administrator had no comments.

In accord with section 404 of the DOE Act, the Federal Energy Regulatory Commission received a copy of this rule and notified DOE that it did not determine that the rule may significantly affect any function within its jurisdiction pursuant to sections 402(a)(1), (b), and (c)(1) of the DOE Act.

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below effective February 1, 1979.

Issued in Washington, D.C. February 7, 1979.

HAZEL R. ROLLINS,
Acting Administrator, Economic Regulatory Administration.

Part 212 is amended by adding to the Appendix to Subpart F a new Special Rule No. 2 to read as follows:

SPECIAL RULE NO. 2.

1. *Scope.* This Special Rule provides for an alteration in the method of allocated crude oil pricing under § 212.94 effective February 1, 1979.

2. Notwithstanding the general rules described in § 212.94(b)(1), effective February 1, 1979, the price at which low sulfur and high sulfur crude oil, respectively, shall be sold by a refiner-seller, when required pursuant to § 211.65 of Part 211 of this chapter, shall not exceed the refiner-seller's weighted average per barrel landed cost (as defined in § 212.82, but utilizing the volumes of imported crude oil at the time of importation thereof into the United States), less the average cost of domestic transportation to the refiner-seller's refinery(ies) of all low sulfur or high sulfur imported crude oil, respectively (other than crude oil imported from Canada), delivered to the refiner-seller in the month in which the sale is made, plus a handling fee of five cents per barrel, and any transportation, gravity and sulfur content adjustments as specified in subparagraphs (2) through (4), respectively, of paragraph (b) of § 212.94. Each refiner-seller making such a sale shall maintain records, which shall be made available to the ERA upon request, listing the volumes and costs of all imported low sulfur and high sulfur crude oil delivered to it.

3. *Provisions of Subpart F.* The provisions of Subpart F of Part 212 shall remain in full force and effect except as expressly modified by the provisions of this Special Rule.

APPENDIX

WAIVER OF THE PROVISIONS OF EXECUTIVE ORDER NO. 12044 ON "IMPROVING GOVERNMENT REGULATIONS" AND THE DEPARTMENT OF ENERGY'S IMPLEMENTING ORDER 2030

Pursuant to the authority vested in me by the Department of Energy Organization Act (Pub. L. 95-91) and the Department's Order 2030 which implements the terms of Executive Order No. 12044 on "Improving Government Regulations", I hereby waive all of the rulemaking procedures contained in the Executive Order and the Department's Order with respect to a rule which amends the price rule contained in 10 CFR 212.94 for sales of crude oil pursuant to 10 CFR 211.65 beginning February 1, 1979 to reflect the price increase for imported crude oil announced by the Organization of Petroleum Exporting Countries ("OPEC") effective January 1, 1979. I base this waiver on the following public interest considerations:

On December 18, 1978 OPEC announced an increase in the price of imported crude oil effective January 1, 1979. Pursuant to 10 CFR 211.65, certain major refiners ("refiner-seller's") are required to sell crude oil to eligible small refiners ("refiner-buyers") which have a demonstrated need for allocations based on lack of access to adequate supplies of domestic and foreign crude oil. Allocated crude oil is currently priced under 10 CFR 212.94 at the weighted-average landed cost of imported crude oil to each refiner-seller over a three-month period, the month of delivery and the two preceding months. If no change were made in this rule until the end of the 60-day comment period, the lower prices prevailing in the months prior to February 1979 (when sellers will begin receiving deliveries of imported crude oil that reflect the January 1 OPEC price increase) would result in per barrel sale prices to refiner-sellers that would be below the world market price for imported crude oil in these months. This would result in higher prices on products subject to price controls for refiner-sellers and in feedstock cost disparities among small refiners, depending upon their relative access to allocated crude oil.

This discrepancy between the world market price of crude oil and the price of allocated crude oil would be contrary to the current pricing rule's objective of assuring that sales of allocated crude oil are made at prices representative of crude oil prices in the world market.

Issued in Washington, D.C., February 7, 1979.

JOHN F. O'LEARY,
Deputy Secretary, Department of Energy.

[FR Doc. 79-4697 Filed 2-12-79; 8:45 am]

[1505-01-M]]

PART 456—RESIDENTIAL ENERGY CONSERVATION PROGRAM

Interpretation of the National Energy Conservation Policy Act

Correction

In FR Doc. 79-3621 appearing at page 6378 in the issue for Thursday, February 1, 1979, on page 6379, second column, subparagraph (b)(2) of § 456.00 should read as follows:

"* * * (2) with respect to which that utility had, by November 9, 1978, completed substantial preparations for undertaking such activities,

until 30 days after the effective date of the procedures promulgated by the Secretary of Energy to implement sections 216(d)(1) and 216(d)(2) of that Act."

[6450-01-M]

PART 790—GEOTHERMAL ENERGY RESEARCH DEVELOPMENT, DEMONSTRATION AND PRODUCTION

Federal Guarantees on Loans

AGENCY: Department of Energy.

ACTION: Final Rule.

SUMMARY: The Department of Energy hereby amends 10 CFR Part 790.6(k) to remove dollar restrictions on the amount of a loan guaranty for a project. In the future, the Department of Energy will utilize that dollar restriction contained in Title V, Sec. 508 of Pub. L. 95-238. This action is necessary to permit the Department of Energy to make a final determination on pending applications involving guarantees on loans in excess of $25,000,000. Written comments from interested parties are invited.

DATE: Written comments must be received on or before March 15, 1979. The rule will become effective 15 days following the closing date for the submission of comments.

ADDRESS: Written comments should be addressed to Department of Energy, Public Hearing Management, Box TX, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Lawrence Falick, Department of Energy, Room 7112, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461 (202) 633-8912.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

On October 1, 1977, the Department of Energy (DOE) assumed the responsibility of the Energy Research and Development Administration (ERDA) for the Geothermal Loan Guaranty Program pursuant to Section 301 of the Department of Energy Organization Act (Pub. L. 95-91). The Geothermal Loan Guaranty Program was implemented by ERDA (10 CFR Part 790) on May 26, 1976 in accordance with authority contained in Title II of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Pub. L. 93-410). Sec. 201(e) of Pub. L. 93-410, before amendment, provided that the amount of a guaranty for any loan for a project shall not exceed $25,000,000. In implementing the Geothermal Loan Guaranty Program, ERDA adopted that statutory limitation which is presently contained in 10 CFR Part 790.6(k).

On February 25, 1978 the Department of Energy Act of 1978—Civilian Applications was enacted (Pub. L. 95-238). Title V of Pub. L. 95-238 contains amendments to Pub. L. 93-410. One amendment contained in Sec. 508(1) of Pub. L. 95-238 removes the dollar restriction in Sec. 201(e) of Pub. L. 93-410 and establishes higher dollar limitations on individual loan guarantees for any project.

DOE has received and is considering two guaranty applications each involving loans in excess of $25,000,000. Should these applications prove to meet conditions and criteria governing approval by the Secretary of Energy, such approval could not be made because of the dollar restriction presently set forth in 10 CFR Part 790.6(k) which is based on Sec. 201(e) of Pub. L. 93-410 prior to amendment. In order to act favorably on these applications, and others that may be received by DOE, this final rule is being issued.

B. DISCUSSION

When ERDA initially adopted 10 CFR Part 790, it included in § 790.6(k) the statutory limitation of $25,000,000 then existing in Sec. 201(e) of Pub. L. 93-410. This limitation has been increased to $100,000,000 by Sec. 508(1) of Pub. L. 95-238. Since the $25,000,000 limitation in Sec. 201(e) no longer exists, DOE is issuing this final rule to remove the existing $25,000,000 limitation in 10 CFR Part 790.6(k) and will abide by the applicable statutory requirement until 10 CFR Part 790 is otherwise amended.

This final rule conforms to a change authorized by statute and DOE has therefore determined that it is an interpretative rule not requiring the publication of a proposed rulemaking. However, in conformance with the spirit of public policy set forth in 5 U.S.C. 553, DOE solicits comments on this amendment from interested parties. Therefore, the effective date of this amendment is being delayed for a total of 45 days to provide 30 days for public comment and 15 days for evaluation of any comments received. In evaluating the comments, DOE will determine whether the effective date should be suspended, and, if it is so determined, a notice to that effect will be published in the FEDERAL REGISTER.

On January 5, 1978, DOE published in the FEDERAL REGISTER (44 FR 1568) a proposed amendment for public comment to 10 CFR Part 790 to (1) implement amendments to Pub. L. 93-410 that are contained in Title V of Pub. L. 95-238, (2) remove certain ambiguities identified during the past two years, and (3) incorporate DOE program and financial policies. Until the proposed amendments in 44 FR 1568 are published as a final rule guaranty applications submitted to DOE will be considered under the provisions of 10 CFR Part 790 as amended only by this rule.

C. COMMENT PROCEDURES

Interested parties are invited to submit written comments with respect to this rule to Department of Energy, Box TX, Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. The outside of the envelope and documents submitted should be identified with the designation "Geothermal Loan Guarantees." Five copies of all written comments and related information should be submitted in time to be received by DOE 30 days after publication of this rule in order to ensure consideration.

Any information or data considered by the person furnishing it to be confidential must be identified. However, only one copy of confidential material need be submitted. Any material not identified as confidential will be considered by DOE to be non-confidential. DOE reserves the right to determine the confidential status of information or data received and to treat it according to its determination.

In consideration of the foregoing, 10 CFR Part 790 is amended as set forth below.

Issued in Washington, D.C., February 6, 1979.

GEORGE S. MCISAAC,
Assistant Secretary,
Resource Applications.

§ 790.6 [Amended]

1. Section 790.6(k) is a amended by deleting this section and substituting the following: "(Reserved)"

[FR Doc. 79-4698 Filed 2-12-79; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATION

[Reg. ER-1102; Amdt. No. 16]

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Prohibited Advertising; Deletion

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., February 7, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: In response to a petition from Trans International Airlines and World Airways, the Board amends its rules to eliminate the requirements that supplemental air carriers (now called "charter air carriers") include the words "supplemental air carrier" in their advertisements, and conduct business in the name set forth in their certificate.

DATES: Effective: March 15, 1979. Adopted: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5444.

SUPPLEMENTARY INFORMATION: Part 208 of the Board's Economic Regulations sets forth the terms, conditions, and limitations of certificates to engage in supplemental air transportation. Subsection 208.30(a) requires a supplemental air carrier to include the words "supplemental air carrier" in all advertising in which it holds out its

services to the public as an authorized air carrier.

The Airline Deregulation Act of 1978, Pub. L. 95-504, amended section 401(e)(6) of the Federal Aviation Act of 1958, redesignating supplemental air carriers as "charter air carriers." The change in terminology does not, however, affect the action taken by this amendment.

Trans International Airlines (TIA) and World Airways filed a petition for rulemaking to delete the advertising requirement of § 208.30(a). Petitioners argued that not only does the requirement unfairly stigmatize supplemental air carriers in the minds of the public, but also places U.S.-flag supplementals at a competitive disadvantage relative to their foreign counterparts.

Trans World Airlines (TWA) argued in answer to the petition that an important distinction exists between scheduled and supplemental air carriers, and that § 208.30(a) serves a "real and present purpose in denoting the statutory role of the supplemental air carrier."

In response to the petition, the Board proposed (EDR-355, 43 FR 22378, May 25, 1978) to amend its rules to eliminate the requirements that supplemental air carriers include the words "supplemental air carrier" in their advertisements, and conduct business in the name set forth in their certificate. Comments were filed in general support of the proposed amendments by Overseas National Airways and National Air Carrier Association (NACA). Comments generally opposed to the changes were filed by American Automobile Association (AAA), to which reply comments were filed by NACA.

The comments in favor of revocation of the requirements of Part 208 generally stated that; (1) Because the reason for the rule had evaporated the rule should be eliminated; and (2) elimination of the adverse requirement would remove adverse discrimination against the supplemental air carriers as compared to the treatment of foreign charter-only air carriers. AAA, on the other hand, although it favored the elimination of the name requirement, questioned the desirability of removing the requirement to identify supplementals as such. It argued that equity would be best served by requiring foreign supplemental (charter-only) air carriers to place the words "supplemental air carrier" in their advertisements, saying that the public has the right to know when it is dealing with a carrier that does not provide scheduled service. In reply to AAA's position NACA stated that charter services are subject to contractual obligations under Board regulations that ensure that leaving the business is not easy.

The Board agrees with the position of the petitioners and supporting comments on both issues in this proceeding. No one has presented any persuasive reason why the public needs special notice of the fact that it is dealing with a supplemental or "charter" airline. In fact, the former line between supplemental and scheduled airlines is no longer clear as the Board grants scheduled authority to a wider variety of airlines, including some that were exclusively supplemental.

As for the use of the carrier's name, the purpose of preventing the confusing use of names by all carriers, including charter carriers is adequately met by the provisions of 14 CFR Part 215. Section 215.2 specifically prohibits air carriers from holding themselves out to the public under any name except that in which they received Board authorization. Since that general prohibition applies to supplementals, the specific prohibition in § 208.30(b) is no longer necessary.

Accordingly, 14 CFR Part 208 is amended as follows:

1. The Table of Contents is amended by deleting and reserving § 208.30 of Subpart A, as follows:

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Subpart A—General Provisions

Sec.

* * * * *

208.30 [Reserved]

* * * * *

§ 208.30 [Reserved]

2. Section 208.30 is revoked and reserved.

(Secs. 204, 401, 411, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 769 (49 U.S.C. 1324, 1371, 1381).)

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4745 Filed 2-12-79; 8:45 am]

[6320-01-M]

[Reg. ER-1105; Amdt. No. 5]

PART 223—FREE AND REDUCED-RATE TRANSPORTATION

Directors, Officers, Employees and Retirees (Members of Their Immediate Families) of Intrastate Carriers

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., February 7, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: This rule allows carriers to provide free and reduced-rate transportation to directors, officers, employees and retirees (and members of their immediate families) of intrastate carriers.

DATES: Effective: February 7, 1979. Adopted: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Judith E. Retchin, Bureau of Pricing and Domestic Aviation, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5009.

SUPPLEMENTARY INFORMATION: The Board issued Notice of Proposed Rulemaking, EDR-364, dated October 20, 1978 (43 FR 49992, October 26, 1978), proposing a blanket exemption from section 403(b) of the Act and Part 221 of the Economic Regulations to allow air carriers to provide free and reduced-rate transportation to directors, officers, employees and retirees (and members of their immediate families) of intrastate carriers. The supplementary information in EDR-364 cited the encouragement of interlining as one of the benefits of free and reduced-rate transportation.

Subsequent to our issuance of EDR-364, Congress enacted the Airline Deregulation Act of 1978, Pub. L. No. 95-504. Two sections of the new Act, sections 401(d)(4)(A) and 416(b)(1), specifically affect the proposed rule. Section 401 firmly endorses interlining and expands the category of eligible intrastate carriers which may engage in interlining. Section 416 expands the class of persons who can receive exemptions and liberalizes the criteria for granting them. Both of these statutory amendments support the rationale behind and the substance of EDR-364.

Comments have been received from Aeroamerica, Inc., Southwest Airlines Co., Great Northern Airlines, Inc., and Lufthansa German Airlines. All the comments expressed support for the proposed rule. Additionally, Southwest, Great Northern and Lufthansa suggest that the rule should be clarified so that it clearly authorizes foreign air carriers engaged in foreign air transportation to enter into similar ar-

rangements with intrastate carriers. They point out that the reasons propounded for adoption of EDR-364 are equally applicable to holders of foreign air carrier permits.

We agree that the proposed rule should be modified as suggested above, and we will change "any air carrier" to "any carrier," as that term is defined in 14 CFR 223.1. Accordingly, the Board amends Part 223 of its Economic Regulations, *Free and Reduced Rate Transportation* (14 CFR Part 223) as follows:

Amend § 223.2 by adding a new paragraph (h) to read:

§ 223.2 Persons to whom free and reduced-rate transportation may be furnished.

In addition to the persons specified in Subparts B and C of this part:

* * * * *

(h) Carriers are exempted from section 403(b) of the Act and Part 221 of the Board's Economic Regulations to the extent necessary to enable them to provide free or reduced-rate transportation to directors, officers, employees and retirees (and members of their immediate families) of intrastate carriers.

(Secs. 102, 204(a), 403(b), Federal Aviation Act of 1958, as amended; 92 Stat. 1706, 72 Stat. 743, 758; (49 U.S.C. 1302, 1324, 1373))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4755 Filed 2-12-79; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Docket 9078. National Systems Corp., Et Al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, dismisses the complaint against National Systems Corporation and individually named corporate officers, and requires North American Correspondence Schools, a Newport, Calif. firm offering correspondence courses in various fields, to cease misrepresenting enrollment prerequisites; school accreditation; testimonials; and the potential earnings, employment opportunities, and demand for its graduates. Prior to contracting, customers would have to be furnished with information regarding the employment success of former students; informed of their right to cancellation and refund; and provided with a seven-day cooling-off period. The order would additionally require the company to make restitution to former eligible students, in a specified manner; maintain records; and institute a surveillance program designed to ensure compliance with the terms of the order.

DATES: Complaint issued March 25, 1976. Decision issued Jan. 11, 1979.[1]

FOR FURTHER INFORMATION CONTACT:

Harvey Saferstein, Director, 7R, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, Calif. 90024, (213) 824-7575.

SUPPLEMENTARY INFORMATION: On Monday, Oct. 30, 1978, there was published in the FEDERAL REGISTER, 43 FR 50446, a proposed consent agreement with analysis In the Matter of National Systems Corporation, a corporation, North American Correspondence Schools, a corporation doing business as North American School of Conservation, North American School of Advertising, North American School of Drafting, North American School of Travel, North American School of Systems and Procedures, North American School of Recreation and Park Management, North American School of Surveying and Mapping, North American School of Accounting, North American School of Motorcycle Repair, North American School of Hotel-Motel Management, and John J. McNaughton, individually and as chairman of the board of directors of National Systems Corporation, Maurice H. Sherman, individually and as an officer of North American Correspondence Schools, Eugene Auerbach and Richard C. Parsons, individually and as employees of North American Correspondence Schools, and Wallace O. Laub, individually and as a member of the board of directors of North American Correspondence Schools, for the purpose of soliciting public comment. Interested parties were given until April 16, 1979 in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.15 Business status, advantages or connections; § 13.15-20 Business methods and policies; § 13.15-155 Institutional connections; § 13.15-225 Personnel or staff; § 13.15-245 Prospects; § 13.15-255 Reputation, success, or standing; § 13.55 Demand, business or other opportunities; § 13.60 Earnings and profits; § 13.85 Government approval, action, connection or standards; § 13.85-5 Accreditation of correspondence courses, etc.; § 13.90 History of product or offering; § 13.110 Endorsements, approval and testimonials; § 13.143 Opportunities; § 13.160 Promotional sales plans; § 13.175 Quality of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing; § 13.285 Value. Subpart—Claiming or Using Endorsements or Testimonials Falsely or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; § 13.330-94 Users, in general. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-35 Employment of independent agencies; § 13.533-45 Maintain records; § 13.533-55 Refunds, rebates and/or credits. Subpart—Furnishing Means and Instrumentalities of Misrepresentation or Deception: § 13.1055 Furnishing means and instrumentalities of misrepresentation or deception. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1365 Authorities and personages connected with; § 13.1370 Business methods, policies and practices; § 13.1435 History; § 13.1520 Personnel or staff; § 13.1535 Qualifications; § 13.1540 Reputation, success or standing.—Goods; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1665 Endorsements; § 13.1670 Jobs and employment; § 13.1710 Qualities or properties; § 13.1715 Quality; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use or standing; § 13.1760 Terms and conditions; § 13.1760-50 Sales contract; § 13.1775 Value.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1854 History of products; § 13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1892 Sales contract, right-to-cancel provision; § 13.1892-2 Commencing contractual obligations prior

[1] Copies of the Complaint and Decision and Order filed with the original document.

to end of cooling-off period; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; § 13.1905-50 Sales contract. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1930 "Degrees," "certificates," etc.; § 13.1935 Earnings and profits; § 13.1995 Job guarantees and employment; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-4746 Filed 2-12-79; 8:45 am]

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—PAYMENT PROCEDURES

PART 140—REIMBURSEMENT

Reimbursement for Railroad Work; Authority Citation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notification of authority citation.

SUMMARY: At 43 FR 27518, June 26, 1978, the Federal Highway Administration updated the allowable rates for labor surcharge and payroll taxes for railroad employees. This document adds the authority citation under which the amendment was issued.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Howard Bander, Office of Fiscal Services, 202-426-0575; or Lee Burstyn, Office of the Chief Counsel, 202-426-0786.

SUPPLEMENTARY INFORMATION: The proper authority citation for the rule document 78-17601 which amended 23 CFR Part 140, Subpart I, Appendix A, published at 43 FR 27518 is as follows:

(23 U.S.C. 315; 49 CFR 1.48(b))

Issued on February 6, 1979.

LORENZO CASANOVA,
Chief Counsel,
Federal Highway Administration.

[FR Doc. 79-4754 Filed 2-12-79; 8:45 am]

[4410-01-M]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Directive No. 90-79]

PART 15—DEFENSE OF CERTAIN SUITS AGAINST FEDERAL EMPLOYEES AND CERTIFICATION AND DEFENSE OF CERTAIN SUITS AGAINST PROGRAM PARTICIPANTS UNDER THE NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976

Civil Division Directive

AGENCY: Justice.

ACTION: Issuance of Directive 90-79.

SUMMARY: This Appendix delegates the authority of the Assistant Attorney General of the Civil Division to make certifications, to withdraw certifications, and to file appropriate motions, as to all certifications set forth in § 15.3 of Title 28 of the Code of Federal Regulations.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeffrey Axelrod, (202) 724-6810.

SUPPLEMENTARY INFORMATION: The following Directive is inserted as the Appendix following 28 CFR 15.3:

CIVIL DIVISION

DIRECTIVE NO. 90-79; JANUARY 22, 1979

1. By virtue of the authority vested in me by Part 15 of Title 28 of the Code of Federal Regulations, particularly § 15.3(b), it is hereby ordered as follows:

2. The authority delegated to the Assistant Attorney General in charge of the Civil Division to make the certifications provided for in 10 U.S.C. 1089(c), 22 U.S.C. 817(c), 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) and 2458a(c) with respect to civil actions or proceedings brought against Federal employees and to certify the status of program participants under the National Swine Flu Immunization Program of 1976, as that term is defined in 42 U.S.C. 247b(k)(2)(B), and as required under 42 U.S.C. 247b(k)(4)-(5), is hereby delegated to any Deputy Assistant Attorney General of the Civil Division and to any Director of the Torts Branch, any one of whom may individually exercise the authority in any given instance. This delegation also includes the authority to withdraw the certification and file appropriate motions as set forth in § 15.3(b) of Title 28 of the Code of Federal Regulations.

3. Civil Division Directive No. 90-77 is hereby revoked.

BARBARA ALLEN BABCOCK,
Assistant Attorney General.

[FR Doc. 79-4771 Filed 2-12-79; 8:45 am]

[4510-43-M]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

Coal Mine Safety and Health; Administrative Amendments

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: These amendments accomplish the transfer of certain functions relating to administration of training requirements for coal miners under 30 CFR Parts 75 and 77. MSHA Training Center Chiefs will now perform functions previously delegated to Coal Mine Safety and Health District Managers.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Harry Schell, Room 516, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-1385.

SUPPLEMENTARY INFORMATION:

I. ANALYSIS

Authority to approve mine safety and health training plans and develop and administer programs for the education and training of operators and miners in mine safety and health has been transferred from MSHA District Managers to MSHA Training Center Chiefs in order to centralize administration of MSHA training and education functions.

II. EFFECT ON EXISTING RULES

In order to provide for conforming word changes pursuant to this transfer, Parts 75 and 77, Subchapter O of Chapter I, Title 30, Code of Federal

Regulations (CFR) are amended. These amendments do not affect the substantive requirements of the regulations. An earlier amendment changed the names and addresses of various MSHA organizational units pursuant to the Mine Safety and Health Amendments Act of 1977. (43 FR. 12312, March 24, 1978).

III. RULEMAKING PROCEDURE

These amendments involve nonsubstantive matters relating to agency organization and procedures. Therefore, these amendments are exempt from the notice and comment procedures of 5 U.S.C. section 553 by 5 U.S.C. section 553(a)(2) and (b)(3)(A). These rules are effective February 13, 1979.

NOTE.—It has been determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044.

IV. DRAFTING INFORMATION

The principal person responsible for the drafting of this final rule is: Manuel R. Lopez, Attorney Advisor, Office of the Solicitor, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-1157.

Parts 75 and 77 of 30 CFR are amended as follows:

§ 75.153 [Amended]

1. In 30 CFR 75.153 in paragraph (c) delete the words "District Manager of any Coal Mine Health and Safety District" and substitute the words "Training Center Chief of the Training District." Also delete the words "Coal Mine Health and Safety Districts" and substitute the words "MSHA Training Districts."

2. In 30 CFR 75.153 in paragraph (g) delete the words "District Manager of the Coal Mine Health and Safety District" and substitute the words "Training Center Chief of the Training District."

§ 75.160-1 [Amended]

3. In 30 CFR 75.160-1 in the first sentence delete the words "District Manager" and substitute the words "Training Center Chief."

§ 75.1713-3 [Amended]

4. In 30 CFR 75.1713-3 in the first sentence delete the words "District Manager" and substitute the words "Training Center Chief." Also in 30 CFR 75.1713-3 in the second sentence delete the words "District Manager" and substitute the words "Training Center Chief."

5. 30 CFR 75.1721 is revised to read as follows:

§ 75.1721 Opening of new underground coal mines, or reopening and reactivating of abandoned or deactivated coal mines, notification by the operator; requirements.

(a) Each operator of a new underground coal mine, and a mine which has been abandoned or deactivated and is to be reopened or reactivated, shall prior to opening, reopening or reactivating the mine notify the Coal Mine Health and Safety District Manager for the district in which the mine is located of the approximate date of the proposed or actual opening of such mine. Thereafter, and as soon as practicable, the operator of such mine shall submit all preliminary plans in accordance with paragraphs (b) and (c) of this section to the District Manager or Training Center Chief as appropriate, and the operator shall not develop any part of the coalbed in such mine unless and until all preliminary plans have been approved.

(b) The preliminary plans required to be submitted by the operator to the District Manager shall be in writing and shall contain the following:

(1) The name and location of the proposed mine and the Mine Safety and Health Administration mine identification number, if known;

(2) The name and address of the mine operator(s);

(3) The name and address of the principal official designated by the operator as the person who is in charge of health and safety at the mine;

(4) The identification and approximate height of the coalbed to be developed;

(5) The system of mining to be employed;

(6) A proposed roof control plan containing the information specified in § 75.200-5;

(7) A proposed ventilation plan and methane and dust control plan containing the information specified in §§ 75.316-1 and 75.316-2;

(8) A proposed plan for sealing abandoned areas containing the information specified in § 75.330-1;

(9) A proposed program for searching miners for smoking materials in accordance with the provisions of § 75.1702; and,

(10) A proposed plan for emergency medical assistance and emergency communication in accordance with the provisions of §§ 75.1713-1 and 75.1713-2.

(c) The preliminary plans required to be submitted by the operator to the Training Center Chief shall be in writing and shall contain the following:

(1) The proposed training plan containing the information specified in §§ 48.3 and 48.23 of this chapter, and

(2) A proposed plan for training and retraining certified and qualified persons containing the information specified in § 75.160-1.

§ 77.103 [Amended]

6. In 30 CFR 77.103 in paragraph (c) delete the words "the District Manager of any Coal Mine Health and Safety District" and substitute the words "Training Center Chief of any Training District." Also delete the words "Coal Mine Health and Safety Districts" and substitute the words "MSHA Training Districts."

7. In 30 CFR 77.103 in paragraph (g) delete the words "District Manager of the Coal Mine Health and Safety District" and substitute the words "Training Center Chief of the Training District."

§ 77.107-1 [Amended]

8. In 30 CFR 77.107-1 in the first sentence delete the words "District Manager of the Coal Mine Health and Safety District" and substitute the words "Training Center Chief of the Training District."

§ 77.1703 [Amended]

9. In 30 CFR 77.1703 in the first sentence delete the words "District Manager" and substitute the words "Training Center Chief." Also, in 30 CFR 77.1703 in the second sentence delete the words "Coal Mine Health and Safety District Manager" and substitute the words "Training Center Chief."

Dated: February 2, 1979.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-4713 Filed 2-12-79; 8:45 am]

[3510-15-M]

Title 32A—National Defense Appendix

CHAPTER XIX—NATIONAL SHIPPING AUTHORITY

Control and Utilization of Ports

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises Chapter XIX of Title 32A, Code of Federal Regulations, applicable during emergencies affecting the national security to the utilization of port facilities and appointment of Federal Port Controllers. The caption of Chapter XIX has been revised to more accurately reflect the contents of this chapter. Part 1901 has been restructured for purposes of clarity and to present more information with respect to the control to be exercised by the

National Shipping Authority over port facilities required for emergency use. Part 1902 has been revised completely to describe the stand-by contract of appointment, as well as the compensation and responsibilities of Federal Port Controllers. New Part 1903 prescribes the arrangements and standard form of a marine terminal contract to be negotiated with terminal operators on a stand-by basis.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Armour S. Armstrong, Director of Port and Intermodal Development, Department of Commerce, Room 4888, Maritime Administration, Washington D.C., 20230, (202) 377-4124.

SUPPLEMENTARY INFORMATION: On July 3, 1978 the Maritime Administration published in the FEDERAL REGISTER a proposed rule (43 FR 12818) revising Chapter XIX of Title 32A Code of Federal Regulations. The purpose was to provide comprehensive regulations relating to the control to be exercised by the National Shipping Authority over port facilites required for emergency use, and the control and utilization of ports during emergencies affecting national security. The agency invited comments on the proposed rule.

Comments were received from one port authority and two federal agencies. Comments relating to omissions and errors in terminology in the text are not discussed, and appropriate corrections along with editorial changes, have been made.

DISCUSSION OF MAJOR COMMENTS

The port authority submitted two major comments which are reflected in this final rule. One comment related to Part 1902 expressed concern over the provision contained in Article 9 of Section 4. This provision required the contractor to take "affirmative action" including, but not limited to, employment, promotion, demotion, transfer, payoff or termination, selection for training, and direct or indirect compensation with respect to employment of personnel. It was recommended that this article be modifed to provide exception in those cases where such requirements are administered by State civil service commissions or comparable local government agencies. The second comment recommended that since some port authorities operate as landlords, while others perform or act as operating ports, Part 1903, paragraph 1(a) of Section 3, (Part 1 of the Contract) be modified to provide that operators, as independent contractors, agree to perform or arrange for the performance of all the customary duties and functions of a terminal operator.

The Department of Defense submitted two major proposed modifications. One proposal, which has been adopted in the final rule, is the addition of a provision in Section 4 of Part 1902 to assure that no unnecessary costs are charged to the government. Subdivision (a)(2), Article 12 of that section has been amended to add a sentence at the end stating "No compensation will accrue to the contractor during a stand-by period." The other comment recommended that Section 2 of Part 1903 be amended at the end to provide notice that the Department of Defense (DOD) will continue to utilize its procedures and to contract directly for services necessary to move DOD cargo through civilian facilities, allocated to DOD for long term exclusive use, and that contractors at other facilities used intermittently for DOD cargo will be required to provide unique services required by DOD under special contractual obligations specified by DOD.

The recommendation was not adopted because DOD will ordinarily be able to contract directly for terminal services necessary to move DOD cargo through civilian commercial marine facilities allocated to DOD for long term exclusive use. Where the facility owner or operator is already providing terminal operating services, any unique requirements for marine terminal services by DOD or any other agency can be procured contractually.

Several U.S. Coast Guard recommendations have been adopted in the final rule which are intended to clarify the respective responsibilities of the Coast Guard and Maritime Administration in time of national emergency.

The Assistant Secretary of Commerce for Maritime Affairs has approved the determination that these amendments will not result in any major economic consequences that would require the preparation of a regulatory analysis pursuant to EO 12044 (43 FR 12661); Department of Commerce Administration Order 218-7 (44 FR 2082, January 9, 1979).

Accordingly, Chapter XIX of Title 32A, Code of Federal Regulations is revised to read as follows:

CHAPTER XIX—NATIONAL SHIPPING AUTHORITY, CONTROL AND UTILIZATION OF PORTS

PART 1901—RESTRICTIONS UPON THE TRANSFER OR CHANGE IN USE OR IN TERMS GOVERNING UTILIZATION OF PORT FACILITIES

Sec.
1. Definitions.
2. Effective date.
3. Federal control of port facilities.
4. Port facilities predesignated for emergency use.
5. Restrictions on the transfer, change in use or terms; governing utilization of port facilities.
6. Application for approval; place of filing; investigation; disposition by Federal Port Controller; request for review; disposition by the National Shipping Authority.
7. Exemptions.
8. Applicability.
9. Communications.

AUTHORITY: The Defense Production Act of 1950, as amended (50 app. U.S.C. 2061 et seq.); the Federal Civil Defense Act of 1950 as amended (50 app. U.S.C. 2251 et seq.); Reorganization Plan No. 1 of 1958 (72 Stat. 1799) and No. 1 of 1973 (87 Stat. 1089); EO 11490 (34 FR 17567, 3 CFR 1966-1970 Comp., p. 820) and E.O. 11921 (41 FR 24294, 3 CFR 1976 Comp.); and Department of Commerce Organization Order 10-8 (38 FR 19707 July 23, 1973).

Sec. 1 Definitions.

As used in this part or any other part of this Chapter XIX the term:

(a) "National Shipping Authority (NSA)," means the emergency shipping operations activity of the Maritime Administration established by the Secretary of Commerce, when specifically activated during an emergency affecting national security in accordance with existing statutory authority.

(b) "Person" means any individual, partnership, corporation, association, joint stock company, business trust, or other organized group of persons, or any trustee, receiver, assignee, or personal representative, and includes any department, agency, or corporation of the United States, any State, or any political, governmental, or legal entity.

(c) "Federal Port Controller" means a person designated as such in accordance with part 1902 of this chapter XIX, under a standard form of service agreement to exercise delegated authorities of the Director, NSA, in the control of operations of a designated port or group of ports in time of national emergency.

(d) "Port" or "port area" includes any zone contiguous to or a part of the traffic network of an ocean or Great Lakes port, or outport location, including beach loading sites, within which facilities exist for transshipment of persons and property between domestic carriers and carriers engaged in coastal, intercoastal and overseas transportation.

(e) "Port facility" means a specific location in a port where passengers or commodities are transferred between land and water carriers or between two water carriers, specifically including: wharves, piers, sheds, warehouses, yards, and docks.

(f) "Port equipment" means mechanical and other devices used for loading and unloading passengers and commodities, including fork lifts, towmotors, jitneys, straddle carriers, floating cranes, etc.

(g) "Transfer" means to sell, lease, trade, lend, give, relinquish title or possession to, or to physically transfer in any other way.

Sec. 2 Effective date.

The provisions of this part are effective during the existence of a state of civil defense or national emergency proclaimed by the President of the United States in accordance with existing statutory authority or by concurrent resolution of the Congress.

Sec. 3 Federal control of port facilities.

During any period when the provisions of this part are in effect the NSA shall exercise such control of ports in the United States and its territories or possessions as may be necessary to meet the requirements of the national security. Control shall be consistent with the orders of the Coast Guard Captain of the Port relating to the safety and security of the port.

Sec. 4 Port facilities predesignated for emergency use.

(a) Certain port facilities selected for standby contracts or agreements for use by Government agencies shall be controlled directly by the NSA.

(b) Facilities which are not required by the United States immediately on the effective date of this part will be released. The Director, NSA shall have the discretion to approve contracts for subsequent exclusive use by the United States of port facilities in lieu of formal requisitioning of such properties.

Sec. 5 Restrictions on the transfer or change in use or in terms governing utilization of port facilities.

Except as otherwise provided in this part, and irrespective of the terms of any contract or other commitment, whether or not the facility has been designated for emergency use in accordance with section 3 of this part:

(a) No person shall transfer, and no person shall accept transfer of any port facility unless such transfer has been approved by the NSA.

(b) No person shall use any port facility for any purpose or use other than that for which it was being used on the day preceding the effective date of this part, unless such change in purpose or use has been approved by the NSA.

(c) No person shall change or alter the terms or conditions under which any port facility was being operated or used on the day preceding the effective date of this part, unless such change has been approved by the NSA: *Provided,* That this restriction shall not relate to the filing of tariffs with the Federal Maritime Commission as required by applicable law.

Sec. 6 Application for approval; place of filing; investigation; disposition by Federal Port Controller; request for review; disposition by the NSA.

(a) Application for approval of a transfer of, or change in use of, or change in terms governing utilization of any port facility shall be in writing, and shall contain the following information:

(1) Name, address, and principal place of business of applicant;

(2) Specific description and location of port facility involved;

(3) Name, address, and principal place of business of owner and/or operator of such port facility;

(4) Present use of such port facility;

(5) Proposed use of such port facility; and

(6) A statement of the reasons why such transfer, change in use, or change in terms, is in the interests of the war effort, national defense, or the maintenance of the essential civilian economy.

(b) The application shall be signed by the applicant or by any lawfully authorized agent or representative of the applicant who is familiar with the facts stated therein.

(c) The application and two clear copies thereof shall be filed in the office of the Federal Port Controller of the port in which the port facility is located, when a Federal Port Controller has been designated for the port. For all other ports, the application and copies shall be filed in the office of the Maritime Administration Region Director for the area where the port is located.

(d) The Federal Port Controller or Region Director may require the applicant to submit reasonable proof of statements made in support of the application, and may make such investigation as may be necessary for proper disposition of the application. The Federal Port Controller or Region Director shall not be required to make any disposition of the application unless and until such reasonable proof has been submitted: *Provided,* That the disposition of any such application by the Federal Port Controller or Region Director shall not be delayed for more than 60 days from the date of the filing thereof for the purpose of completing any such investigation.

(e) The Federal Port Controller, or Maritime Administration's Region Director or Area Officer may approve the application in whole or in part when the action covered by the application to the extent approved, is in the interests of the war effort, national defense, or the maintenance of the essential civilian economy.

(f) Any applicant aggrieved by the action of the Federal Port Controller or Region Director in disapproving in whole or in part his application may request, in writing, that such action be reviewed by the Director, NSA. The written request shall contain a statement of reasons why the decision of the Federal Port Controller should be reversed or modified. The Director, NSA, or a designee, will review the application on the record made before the Federal Port Controller and will dispose of the application on its merits in accordance with the standards set forth above.

Sec. 7 Exemptions.

The provisions of this part shall not apply to any port facility owned by, or organic to, any agency or department of the United States as of the effective date of this order.

Sec. 8 Applicability.

This part shall apply to the States of the United States, Puerto Rico, and the Virgin Islands.

Sec. 9 Communications.

Communications concerning this part should refer to 32A CFR Part 1901 and should be addressed to the Assistant Secretary for Maritime Affairs, Department of Commerce, Washington, D.C. 20230.

PART 1902—FEDERAL PORT CONTROLLERS

Sec.
1. Purpose.
2. Definitions.
3. Stand-by agreements.
4. Service agreements.

AUTHORITY: The Defense Production Act of 1950, as amended (50 app. U.S.C. 2061 et seq.); the Federal Civil Defense Act of 1950 as amended (50 app. U.S.C. 2251 et seq.); Reorganization plans No. 1 of 1958 (72 Stat. 1799) and No. 1 of 1973 (87 Stat. 1089); EO 11490 (34 FR 17567, 3 CFR 1966-1970 Comp., p. 820) and EO 11921 (41 FR 24294, 3 CFR 1976 Comp.); and Department of Commerce Organization Order 10-8 (38 FR 19707 July 23, 1973).

Sec. 1 Purpose.

This part prescribes the standard form of the service agreement to be entered into by the United States of America, acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, U.S. Department of Commerce, with State or municipal port authorities or, private corporations, covering the appointment of individuals within their organizations as Federal Port Controllers, and providing the required supporting staff and resources.

Sec. 2 Definitions.

(a) "Federal control of use of port facilities" means the exercise of jurisdiction over the use of port facilities, as defined in section 1(e) of 32A CFR Part 1901, equipment and services (other than port facilities, equipment and services owned by, or organic to any agency or department of the United States) in time of emergency to meet the needs of the national defense and maintain the essential civilian economy.

(b) "Federal Port Controller" means a person designated as such under a standard form of service agreement to exercise delegated authorities of the Director, NSA, in the use of port facilities of a designated port or group of ports in time of national emergency.

Sec. 3 Standby agreements.

The Director, NSA, may negotiate the standard form of service agreement, specified in section 4, with port authorities on a standby basis prior to the declaration of a war or national emergency. In such cases the contractor accepts the obligation to maintain a qualified incumbent in the position specified in article 1 of the service agreement and to be prepared to furnish the resources specified in articles 4 and 5.

Sec. 4 Service agreements.

Contract MA ————

SERVICE AGREEMENT, FEDERAL PORT CONTROLLER

This agreement, made as of ————, 19—, between the United States of America (herein called the "United States"), acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Commerce, and ————, a ————, organized and existing under the laws of ———— (herein called the "Contractor").

WITNESSETH

It is this day mutually agreed between the parties as follows:

Article 1. *Appointment of Federal Port Controller.* The United States appoints the incumbent of the position of ————, an employee of the Contractor, as Federal Port Controller, to serve as the agent of the United States and not as an independent contractor, to exercise delegated authority of the Director, NSA, in the control of port operations in time of national emergency.

Article 2. *Acceptance of appointment.* (a) The contractor agrees to the appointment and undertakes and promises to maintain a qualified incumbent in the position specified in articles 4 and 5 and otherwise required by the Federal Port Controller and agreed to by the United States. Maintaining the equivalent of such specified positions under any subsequent reorganization of port staff is deemed to be in compliance with this article.

(b) The contractor undertakes and promises to ensure that the Federal Port Controller and agreed supporting staff will be relieved of other staff duties and responsibilities during any period in which the arrangements provided for in this agreement are in effect, to the extent necessary to enable them to exercise diligently the authority delegated by the Director, NSA, in accordance with such directions, orders, or regulations not inconsistent with this agreement as the United States (NSA) has by that time prescribed or may from time to time subsequently prescribe to the satisfaction of the director, NSA.

Article 3. *Scope of Control.* The Federal Port Controller shall exercise the authorities delegated with respect to port operations in the prescribed area of————.

Article 4. *Responsibilities and functions of the Federal Port Controller—(a) Responsibilities.* The Federal Port Controller, acting as an agent of the United States (NSA), is charged with exercising due diligence to protect the interests of the United States in support of any war effort or declared national emergency including maintenance of the essential civilian economy and be responsible for insuring the efficient and effective utilization of the port in accordance with such directions, orders, regulations, supervision, and inspections as the United States (NSA) may prescribe (or in the absence of such directions, orders, forms, and methods of supervision and inspection, in accordance with customary commercial practice). Responsibilities generally include:

(1) Formulation of port coordination and support policy and assurance of adherence thereto:

(2) Expediting of ship turnaround and prevention of congestion of ships and cargo in port;

(3) Correlation of arrangements for rapid clearance and rapid transit of commodities through the port;

(4) Correlation of arrangements for berthing ships and their loading and discharging;

(5) Provision through port control agency channels, of advice on daily port capacities and workload; and

(6) Disposition of frustrated cargo to prevent reduction of port capacity.

(b) *Functions.* Subject to the direction and control of the NSA, in accordance with such policies, programs, allocations, and priorities as may be adopted or established, the Federal Port Controller will:

(1) Furnish the NSA necessary information based upon the local situation and conditions, for establishment by the NSA, of periodic maximum quotas of cargo ocean lift for the port. As appropriate such information shall include but not be limited to estimates of port capacity; the port work load; and availability of berths, vessels, cargoes, labor, and equipment.

(2) Recommend changes of destination of ships or cargo to appropriate representatives of the NSA.

(3) Coordinate port operations to accommodate ships diverted in emergencies by naval authorities.

(4) Coordinate through the Federal agency responsible for land transportation, movement of traffic to and from port areas and, as necessary, exercise controls in coordination with said agency, over the movement of traffic into, within, and out of port areas in accordance with requirements and available port capacity for transshipment.

(5) Administer priorities for the movement of traffic through port areas.

(6) Provide guidance for the coordination of port terminal and forwarding operations; exercise control over the utilization of port facilities, port equipment, and port services, public and private, except those owned by, or organic to any agency or department of the United States and promote maximum efficiency.

(7) Coordinate and make recommendations with respect to the development of port facilities and rehabilitation of substandard port facilities; recommend restoration or replacement of damaged or destroyed port facilities and direct, coordinate and control the activities of Federal, State, local and private agencies in carrying out such restoration or replacement work as may be authorized by proper authority.

(8) Furnish the NSA with pertinent information and data with respect to local port operations in order to assist the NSA in performing its responsibilities at the national level.

(9) Handle "claimant" requests and problems arising at the local level within authorities delegated by the NSA.

(10) As directed, furnish current information to the Federal agency responsible for land transportation in order that it may approve and issue block releases for port bound traffic to the Department of Defense with respect to military traffic and to the NSA with respect to all other oceangoing traffic, in accordance with firm cargo ocean lift schedules for the port. Shipper agencies may provide individual permits to shippers and depots for specific movements to the port areas. Advise the Federal agency responsible for land transportation where circumstances warrant institution of control by the latter agency over traffic-bound inland from the port area in order to minimize congestion in the port.

Article 5. *Federal Port Controller staff.* The contractor shall provide, in support of the Federal Port Controller, the staff personnel necessary to coordinate actions to overcome any constraints on the effective and efficient conduct of port operations as well as clerical staff to meet the administrative requirements of the Federal Port Controller. The numbers of staff will be determined and agreed to from time to time by the United States (NSA) and the contractor and entered in schedule A attached to this service agreement.

Article 6. *Office Facilities.* The contractor shall provide or arrange for necessary office facilities for the Federal Port Controller activity, including office space, furniture, communications equipment, supplies, utilities, transportation, and other normal administrative support and support services, as necessary and agreed to from time to time by the United States (NSA) and the contractor and recorded in schedule B attached to this service agreement.

Article 7. *Compensation.* (a) At least once a month, the United States (NSA) shall pay to the contractor compensation for the Federal Port Controller's services, the costs of his organization, and the costs of office facilities, administrative support services, as follows:

(1) Compensation for services of the Federal Port Controller and his staff shall be in accordance with salary levels plus monetary items directly related thereto (employee service expenses) in force at the time this agreement comes into force: *Provided,* That subsequent cost of living increases authorized under labor agreements and in accord-

ance with Federal or State regulations will apply: *And provided,* That part-time services will be compensated for on a prorated basis. Any adjustments in compensation after the contract comes into force will be negotiated, if appropriate. Employee service expenses will include the employer contributions for social security and pensions, as well as life/health and workmen's compensation insurance.

(2) Compensation for support other than salaries and related expenses (see art. 6) shall be in accordance with published schedules of charges of the contractor; and if schedules of charges have not been published by the contractor, in such fair and reasonable amount as the United States shall from time to time determine and publish in addendums to this service agreement: *Provided,* That, when facilities and support services are shared by the Federal Port Controller and other agencies and activities compensation shall be prorated on a schedule acceptable to the United States and the contractor.

(b) The contractor shall also be entitled to payment or credit for any service, loss, cost, or expense, whether or not specifically provided for or excepted herein, if, and to the extent that such payment or credit is determined within the sole discretion of the Director, NSA, to be fair and equitable and in accordance with the basic principles or intent of this agreement.

Article 8. *Warranty against contingent fees.* The contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul this agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage, or contingent fee.

Article 9. *Equal opportunity.* During the performance of this agreement, the contractor agrees that the contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The contractor will take affirmative action to insure that all action related to employment is taken without regard to race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, employment, promotion, layoff or termination, direct or indirect compensation and selection for training, except where such provisions are governed by State civil service commissions or comparable government agencies. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the NSA setting forth the provisions of this nondiscrimination clause.

Article 10. *Officials not to benefit.* No persons elected or appointed as members of or delegates to Congress, themselves or by any other persons in trust for them, or for their use or account shall hold or enjoy this agreement in whole or in part, except as provided in Section 433, Title 18, United States Code. The operator shall not employ any member of Congress, either with or without compensation as an attorney, agent, officer, or director.

Article 11. *Right of Comptroller General to Examine Books and Records.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers, and records of the contractor related to this agreement.

Article 12. *Effective Date, Duration and Termination.* (a) This agreement may be negotiated either for immediate execution or on a standby basis.

(1) If negotiated for immediate execution, the agreement is effective as of the day and year set forth above.

(2) If negotiated on a standby basis, the agreement will be effective as of the day and year when the United States notifies the contractor that the services specified in this agreement are required during a civil defense emergency or national emergency, and the operational date will be recorded in an addendum to this agreement: *Provided,* That, during the standby period, the contractor will carry out the obligation specified in paragraph (a) of article 2. No compensation will accrue to the contractor during a stand-by period.

(3) Unless sooner terminated, the agreement shall extend until 6 months after termination of the emergency.

(b) This agreement may be terminated upon thirty (30) days written notice either party to the other party hereto: *Provided, however,* That, notwithstanding any such termination, the contractor shall, at the option of the United States, continue to be responsible for the completion of any work which the contractor is performing on the effective date of termination. Termination or expiration of this agreement shall neither affect nor relieve any party of any liability or obligation that may have accrued prior thereto.

(c) This agreement may be amended, modified or supplemented in writing at any time by mutual consent of the parties hereto. This agreement may not be amended, modified or supplemented otherwise than in writing.

Article 13. *Renegotiation.* This contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951.

Article 14. *Headnotes.* The use of headnotes at the beginning of the articles of this agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

In witness whereof, the parties hereto have executed this agreement in triplicate as of this —— day of —, 19—.

UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE, MARITIME ADMINISTRATION

(Seal)
Attest:

Secretary ————
Director, National Shipping Authority ——
(Corporate Seal)
Attest:
Secretary ————

By: ————————————

Approved as to Form:
General Counsel ————, Maritime Administration.

PART 1902. FEDERAL PORT CONTROLLER

Schedule A

Agreed positions.

Schedule B

Agreed office facilities, furniture and support resources.

PART 1903—OPERATING CONTRACT

Sec.
1. Purpose.
2. Stand-by agreements.
3. Terminal operating contract.

AUTHORITY: The Defense Production Act of 1950, as amended (50 app. U.S.C. 2061 et. seq.); the Federal Civil Defense Act of 1950 as amended (50 app. U.S.C. 2251 et. seq.); Reorganization Plan No. 1 of 1958 (72 Stat. 1799) and No. 1 of 1973 (87 Stat. 1089); EO 11490 (34 FR 17567, CFR 1966-1970 Comp., p. 820) and EO 11921 (41 FR 2494, 3 CFR 1976 Comp.); and Department of Commerce Organization Order 10-8 (38 FR 19707 July 23, 1973).

Section 1 Purpose.

This part prescribes the standard form of marine terminal contract to be entered into by the United States of America, acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, U.S. Department of Commerce, with State or municipal authorities or private terminal operators for the provision of terminal operating services during civil defense emergencies or national emergencies declared by the President of the United States in accordance with existing statutory authority or by concurrent resolution of the Congress.

Sec. 2 Stand-by agreements.

The Director NSA, Maritime Administration, in advance of an emergency, may negotiate the standard form of terminal operating contract specified in Section 3, with terminal operators on a stand-by basis. Stand-by arrangements establish the framework of rapid initiation of government shipping operations at the outset of an emergency.

At port facilities, (as defined in section 1(e) of 32A CFR Part 1901) under the control of the Maritime Administration and allocated for long term exclusive use by the Department of Defense (DOD), provisions will ordinarily be made for the use of contractors under DOD contracts to move DOD cargo through selected ports, to perform such services as pre-stowing, receipt, intransit storage and loading of cargo under DOD procedures for the Defense Transportation System. When it becomes necessary to move DOD cargo through marine terminals under the control of the Maritime Administration, but not allocated for long term exclusive use by DOD, contractors will be required to perform such services as DOD requires for handling cargo and documenting shipments under the Defense Transportation System, with corresponding contractual obligations.

Sec. 3 Terminal operating contract.

Contract MA ————————————

TERMINAL OPERATING CONTRACT

This agreement, made as of ——, 19—, between the United States of America (herein called the "United States"), acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, Department of Commerce, and ———— ————, a ——— organized and existing under the laws of ——— (herein called the "operator").

WITNESSETH

That in consideration of the covenants and agreements of the parties hereinafter contained and set forth, the parties here to do mutually covenant and agree as follows:

Part. 1.

1. *Relationship of parties.* (a) The United States engages the operator as an independent contractor to do and perform or arrange for the performance of all the customary duties and functions of a terminal operator, subject to the terms, covenants and conditions of this agreement and to such rules, regulations and orders as may be issued by the United States from time to time, with respect to such cargo and vessels as the United States may from time to time direct or designate, and at the following terminals: ————, more specifically described in Schedule A hereto attached and made a part hereof by reference, and at such other terminals as the United States may from time to time designate, which the operator may use under temporary assignment in order to expedite the loading and discharging of vessels under jurisdiction of the NSA.

(b) The operator hereby accepts such engagement and agrees to do and perform all the work required by it to be performed under this agreement in an economical and efficient manner and in accordance with the best operating practices, to exercise due diligence to protect and safeguard the interests of the United States in all respects and seek to avoid any delay, loss or damage whatsoever to United States shipping. The operator represents and warrants that it is the ———— of the hereinbefore specified terminals.

2. *Compensation.* (a) As full and complete compensation for the work done and performed by the operator, the United States agrees to pay to the operator, as soon as practicable after the completion of each calendar month's work under the provisions of this agreement the following:

(1) For terminal services, an amount calculated on the basis of rates and charges contained in tariffs on file with the Federal Maritime Commission during the time this agreement is in effect: *Provided, however,* That the operator will be compensated, as a minimum, the amount per month set forth for each terminal in schedule A attached: *And provided further,* That, when the operator, with the approval of the Director, NSA, utilizes the terminal for cargo not controlled by the Director, NSA (that is, for commercial cargo), the compensation received by the operator for handling such cargo shall apply against the minimum compensation; and

(2) For stevedoring services provided or arranged for by the operator and any related contractual services not specified in the terminal tariff such as handling lines or additional lashing or carpentry required for proper stowage or discharge activities, reimbursement for all direct costs of labor as well as those directly related or allocable to the provision of such labor and employee service expenses and costs of materials and equipment, an allowance of 15 percent for GAE is authorized except for those items which are ordinarily provided by the contractor and the basis for charges for which already includes GAE.

(3) An additional amount in payment or credit for any service, loss, cost of expense, whether or not specifically provided for or excepted herein; if, and to the extent that, such payment or credit is found by the Director, NSA, or his designated agent, in his sole discretion, to be fair and equitable and in accordance with the basic principles or intent of this agreement.

(b) Monies due and owing to the operator shall be paid to it only upon the submission of vouchers properly and duly supported and certified. All such vouchers under this agreement shall refer to the date and number of this agreement.

(c) In the event a voucher submitted for payment for the work, or any portion thereof, is not properly supported or certified, the United States may nevertheless make partial payment thereof or payments on account of such voucher as has been properly supported or certified. Such partial payment or payments on account shall not be deemed or held to be a waiver of the right of the United States to revise or adjust such partial payment or payments on account upon the basis of any data or information later received or submitted by the operator.

(d) No payment will be made for handling ship stores or providing services properly billed under vessel contracts or agency agreements related to vessel operations and repairs.

3. *Duration of agreement.* (a) This agreement is effective:

(1) As of the day and year set forth above and, unless sooner terminated, shall extend until 6 months after the termination of the emergency; or

(2) If this agreement is negotiated on a stand-by basis, as of the day and year when the United States notifies the operator that the services specified in this agreement are required, during a civil defense emergency or national emergency; in which case, the effective date will be recorded in an addendum of this agreement.

(b) This agreement may be terminated upon thirty (30) days written notice by either party to the other party hereto: *Provided, however,* That notwithstanding any such termination, the operator shall, at the option of the United States, continue to be responsible for the completion of any work which the operator is performing on the effective date of termination. Termination or expiration of this agreement shall neither affect nor relieve any party of any liability of obligation that may have accrued prior thereto.

(c) This agreement may be amended, modified or supplemented in writing at any time by mutual consent of the parties hereto. This agreement may not be amended, modified or supplemented otherwise than in writing.

4. *Contract documents.* This agreement consists of part I, part II, and schedule A (the latter being hereto attached and made a part hereof by reference) and such other schedules or writing as may be made by the parties in accordance with the provisions of this agreement. Each and every one of the provisions of said part II, schedules and writings are part of this agreement as though hereinbefore set out at length.

In witness whereof, the parties hereto have duly executed this agreement in triplicate as of the day and year first above written.

(Seal)
Attest:

UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE, MARITIME ADMINISTRATION

Secretary ————, Maritime Administration.
By:————————————
Director, National Shipping Authority ——
(Corporate Seal)
Attest:

Secretary ————
Approved as to Form:

By:————————————
General Counsel ————, Maritime Administration.

TERMINAL OPERATING CONTRACT

PART II.

1. *Definitions.* (a) "Cargo" as used in this agreement means all general freight and commodities in bulk (including those damaged or solidified), merchandise, material, mail, baggage, express, ship's and subsistence stores, explosives, petroleum products, petroleum and other similar liquid cargo.

(b) "Terminal Work" as used in this agreement means the operation of the terminals specified in schedule A, as terminals and not for any other purpose, including the handling, receiving, delivering, assembling, checking, sorting, storing, coopering, protecting, and shifting of cargo at the said terminals; stowing and snugging cargo in the space on the terminal; issuing and receiving proper receipts for cargo; loading and discharging boxcars, lighters, scows, barges, carfloats, containers, trailers, and chasis; handling vessel's lines on docking and undocking; doing maintenance, and repair in accordance with the terms of this agreement; any and all other services, operations and functions usually or customarily done or performed by a terminal operator; and any and all other duties, services, operations or functions required by the terms of this agreement to be done or performed by the operator.

(c) "Port Terminal Facilities" as used in this agreement means piers, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk loading and/or unloading structures, landings and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

2. *Duties of the operator.* The operator shall:

(a) If lessee or licensee of the terminals, perform, comply with and abide by all applicable terms, covenants and conditions of the lease or license under which it occupies and uses said terminals;

(b) Make available and operate for the requirements of the United States (which requirements include all cargo and vessels designated by the NSA, whether or not owned by the United States all terminals hereinabove described;

(c) Perform the terminal work as defined and furnish all labor of every nature and description and furnish and use all gear and mechanical devices or other equipment necessary for the most efficient performance;

(d) When requested to do so by the NSA or when incident to its terminal operations, perform or arrange for the shifting of lighters, barges, scows, rail cars and/or carfloats and load and discharge the same;

(e) Insure that the terminals are maintained and kept in proper condition and all berths suitably dredged;

(f) Supply all telephone service, clerical work, light, heat, power, fuel, water and other supplies and services connected with or incidental to the work, within the limits imposed by national resource allocation and priorities systems in effect at the time.

(g) Insure that sub-contractors engaged are experienced and competent to perform adequately in their respective functional field, e.g., handling lines; directing tug operations for docking vessels; planning and conducting cargo stowage with ship or quayside gear and fully complying with all documentation requirements and safety, health and sanitation regulations.

3. *General labor and other provisions.* (a) The operator shall comply with the Social Security Act, the unemployment insurance laws of any State in which work is done, and the provisions of applicable collective bargaining agreements.

(b) The operator recognizes the relation of trust and confidence established between it and the United States by this agreement, and agrees to furnish its best skill and judgment in planning, supervising and performing the work, to make every effort to complete the work in the shortest time practicable, and to cooperate fully with the United States in furthering the interests of the United States. The operator agrees to furnish efficient business administration and superintendence in performing the work.

(c) Upon the execution of this agreement the operator shall immediately furnish to the Regional Office, NSA, written schedules of the wages and contractual working conditions, (including overtime, pay, insurance benefits and other compensation and employment benefits) payable by the operator in performing the work, and whenever requested from time to time thereafter, the operator shall furnish similar written schedules to the Regional Office, NSA, covering the then existing conditions. The operator shall notify the NSA concerning any proposed or actual change, modifications or alteration in such schedules as soon as knowledge thereof is available to the operator.

(d) The operator shall, if required by the NSA, employ identification cards with individual photograph affixed, or other methods of identification, as issued by the United States Coast Guard or other responsible Government authorities.

(e) Overtime work under this agreement shall be incurred or performed by the operator only when required. However, the operator whenever requested by the NSA, shall work overtime.

4. *Notice of labor disputes.* Whenever any actual potential labor dispute is delaying or threatens to delay the timely and efficient performance of the work, the operator will immediately give written notice thereof to the NSA.

5. *Liability of the operator.* (a) While performing the work, the operator shall, except as provided in paragraph 6(c) of part II hereof, be responsible for any and all loss, damage or injury, including death to persons, cargo, vessels, their stores, apparel or equipment, wharves, docks, piers, lighters, elevators, cars, carfloats or other property or thing, arising through the negligence or fault of the operator, its employees or terminals: *Provided,* That, to the extent not covered by insurance, the operator shall not be responsible to the NSA, for any loss, damage or injury resulting from the negligence or wrongful acts of the NSA; or from acts of the operator and its employees performed only because specifically so directed by the NSA; or from defects or other gear supplied by the United States.

(b) The operator shall be under no liability to the United States in the event that the operator should fail to perform any work hereunder by reason of any labor shortage, dispute or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the operator, whether or not of the same or similar nature; or shall do or fail to do any act in reliance upon instructions of military or naval authorities.

6. *Insurance requirements and indemnification.* (a) The operator shall procure, and maintain during the term of this agreement, pay for one or more policies of insurance insuring it as follows, as the basis for calculating compensation payable under paragraph 5(a) above:

(1) Coverage of all piers, wharves, buildings, structures, facilities and equipment, as owner or in accordance with terms of lease.

(2) Standard workman's compensation insurance and employer's liability insurance, including longshoremen and harbor worker's compensation insurance, or such of these as may be proper under applicable State or Federal statutes. Such insurance shall, unless otherwise required by applicable State or Federal statutes, be subject to $50,000/100,000 limits and shall be full coverage with occupational disease endorsement. The operator may, however, be a self-insurer against the risks in this subparagraph, if it has obtained the prior approval of the Director, NSA, such approval to be given upon the submission of satisfactory evidence that the operator has duly qualified as a self-insurer under applicable provisions of law.

(3) Public liability insurance with limits of at least $1,000,000 for the death or bodily injuries to one person and at least $5,000,000 for the death or bodily injuries to more than one person in any one accident or occurrence.

(4) Property damage liability insurance covering damage to or loss of property resulting from the negligence of the operator with a limit of $1,000,000 for each occurrence.

(b) All liability insurance obtained by the operator as provided in paragraph (a)(3) of this section above shall name the United States as additional insured or provided for a waiver or subrogation.

(c) The operator's work is incident to war activities of the United States and will involve risks and hazards far in excess of those normally incident to peacetime commercial operations. To induce the operator to undertake the performance of the work for the compensation herein provided, and thus obtain for the United States the resulting benefit of such reduced compensation, the United States undertakes to and does indemnify the operator and hold it harmless against any loss or damage to the terminals (whether owned, leased or occupied under license) and against expense (including expense of litigation), liability to and claims of third persons because of loss, damage or injury to persons, cargo, vessels, their stores, apparel or equipment, wharves, piers, docks, lighters, barges, scows, elevators, rail cars, carfloats, or other property or thing, arising through the negligence or fault of the operator, its employees, gear or equipment, or otherwise, all subject, however, to the following conditions and limitations:

(1) The undertaking of the United States shall be applicable only and limited to:

(a) For public liability the amount such loss, expense, or liability arising from any single catastrophe, accident or occurrence exceeds the sum of $1,000,000 each person and $5,000,000 per accident or the sum of insurance approved or required to be carried in excess of these limits, whichever sum is greater and

(b) For property damage liability the amount such loss, expense or liability arising from any single catastrophe, accident or occurrence exceeds the sum of $1,000,000 per accident or the sum of insurance approved or required to be carried in excess of these limits whichever sum is greater.

(2) The undertaking of the United States shall not be applicable and the United States shall have no obligation or liability in respect of such undertaking or otherwise, in situations in which such loss, expense or liability is due in whole or in part to willful and deliberate disregard of instructions of the Administrator or the personal failure to exercise good faith or insofar as the character of the work permits under wartime operations that degree of care normally exercised under like conditions in the performance of the operator's peacetime commercial operations, by the elected corporate officers of the operator or by the representative of the operator having supervision and direction of all operations at any terminal where the operator may perform services hereunder.

(3) As soon as practicable after occurrence of any event from which the obligation of the United States to hold the operator harmless against loss, expense and liability might arise, written notice of such event shall be given by the operator to the United States, which notice shall contain full particulars of the event. If claim is made or suit is brought thereafter against the operator as a result or because of such event, the operator shall immediately deliver to the United States every demand, notice, summons or other process received by it or its representatives, and the United States shall provide appropriate attachment or appeal bonds or undertakings where required in the course of such litigation.

(4) The operator shall cooperate with the United States and, upon the request of the United States, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct (including defense) of suits; and the United States shall reimburse the operator for reasonable out-of-pocket expenses, other than loss of earnings, incurred in so doing. The operator shall not voluntarily, except at its own cost, make any payment, assume any obligation or incur any expense, other than for such immediate medical and surgical relief to others as shall be imperative at the time of said occurrence of such event.

(5) This undertaking of the United States to hold the operator harmless against loss, expense and liability as herein provided, shall not create or give rise to any right,

privilege or power in any person or organization, except the operator, nor shall any person or organization be or become entitled to join the United States as a co-defendent in any action against the operator brought to determine the operator's liability or for any other purpose; *Provided, however,* That as to any risk borne or assumed by the United States through the undertaking set above, the United States shall be and hereby is subrogated by the operator to any claim, demand or cause of action against third persons or organizations which exists or may arise in favor of the operator, and the operator shall, if so required, forthwith execute a formal assignment or transfer of such claim, demand or cause of action.

(6) This undertaking of the United States shall not apply against any loss or expense resulting from enemy attack upon the United States.

7. *Covenant against assignment or sublease of terminals.* The operator shall not assign or sublet the terminals or any portion therof nor grant any license with respect thereto, except in the ordinary course of terminal operations and subject to the approval of the NSA.

8. *Custom of the port.* No rule or custom of the port in conflict with any provision or term of this agreement will be binding upon the United States, unless the operator is legally obligated to comply with the same pursuant to the laws of the United States or laws of any State thereof or pursuant to the terms, provisions, covenants and conditions of any lease covering the terminals and entered into between the operator and its lessor or licensor thereof.

9. *Extra work.* The United States will neither compensate nor make any payments to the operator for any extra work in connection with the operation of terminals which it may render in addition to the work specifically required by this agreement, except as provided in paragraph 3(e) of part II hereof.

10. *Status of employees.* All employees of the operator or of any other person or organization employed in performance of the work shall at all times be the employees of the operator or of such other person or organization, as the case may be, and are not employees of the United States.

11. *Delegation of authority.* Wherever and whenever any right, power or authority herein is granted or given to the United States, such right, power or authority may be exercised by the NSA or such agent or agents as the United States may appoint, and the act or acts of such agent or agents when taken shall constitute the act of the United States hereunder. In performing the work, the operator may rely upon the instructions and directions of the Director, NSA, his officers and responsible employees, or any person or agency authorized by him. Whenever practicable, instructions and directions to the operator shall be in writing and oral instructions or directions given shall be confirmed promptly in writing. No Director's orders or regulations shall have retroactive effect without the written consent of the General Counsel, Maritime Administration.

12. *Warranty against contingent fees.* The operator warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage, or contingent fee.

13. *Equal opportunity.* During the performance of this agreement, the operator agrees as follows:

(a) The operator will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The contractor will take affirmative action to insure that all action related to employment is taken without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, employment, promotion, layoff or termination, direct or indirect compensation and selection for training, except where such provisions are governed by State civil service commissions or comparable government agencies. The contractor agrees to post in conspicuous places, available to employees and applicants, notices to be provided by the NSA setting forth the provisions of this nondiscrimination clause.

(b) The operator will, in all solicitations or advertisements for employees placed by or on behalf of the operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

(c) The operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the NSA, advising the labor union or worker's representative of the operator's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The operator will compy with all provisions of Executive Order No. 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor.

(e) The operator will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the NSA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the operator's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part, and the operator may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The operator will include the provisions of this paragraph in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The operator will take such action with respect to any subcontract or purchase order as the NSA may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the operator becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the NSA, the operator may request the United States to enter into such litigation to protect the interests of the United States.

14. *Officials not to benefit.* No persons elected or appointed as members of or delegates to Congress, themselves or by any other persons in trust for them, or for their use or account shall hold or enjoy this agreement in whole or in part, except as provided in Section 433, Title 18, United States Code. The operator shall not employ any member of Congress, either with or without compensation, as an attorney, agent, officer or director.

15. *Right of Controller General to examine books and records.* The Controller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the operator or any of its subcontractors engaged in the performance of the work under this agreement.

16. *Renegotiation.* This agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951. The operator shall, in compliance with said section 104, insert the provisions of this paragraph in each subcontract and purchase order made or issued in carrying out this agreement.

17. *Headnotes.* The use of headnotes at the beginning of the articles of this agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

SCHEDULE A—TERMINAL OPERATING CONTRACT

Description of Terminal(s) and the agreed minimum dollars per month for each.

AUTHORITY: The Defense Production Act of 1950, as amended (50 app. U.S.C. 2061 et seq.); the Federal Civil Defense Act of 1950 as amended (50 app. U.S.C. 2251 et. seq.); Reorganization Plan No. 1 of 1958 (72 Stat. 1799) and No. 1 of 1973 (87 Stat. 1089); E. O. 11490 (34 FR 17567, CFR 1966-1970 Comp., p. 820) and E. O. 11921 (41 FR 2494, 3 CFR 1976 Comp.); and Department of Commerce Organization Order 10-8 (38 FR 19707 July 23, 1973).

Dated: February 2, 1978.

By order of the Assistant Secretary for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary,
Maritime Administration.

[FR Doc. 4651 Filed 2-12-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 1042-2]

PART 418—FERTILIZER MANUFACTURING POINT SOURCE CATEGORY

Revocation of Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Revocation of regulations.

SUMMARY: The United States Environmental Protection Agency today is revoking regulations under the Clean Water Act which establish pH parameters for fertilizer manufacturing plants producing urea and ammonium nitrate. This agency action is based upon a request for reconsideration of the pH regulations submitted by some affected companies. Based upon a preliminary evaluation of the request EPA has concluded that these pH regulations should be withdrawn until the industry petition can be fully evaluated.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:
Harold B. Coughlin, Effluent Guidelines Division, United States Environmental Protection Agency 401 M Street SW., Room 911, WSME (WH-552), Washington, D.C. 20460, (202) 426-2560.

SUPPLEMENTARY INFORMATION: On April 26, 1978, EPA promulgated amended regulations establishing effluent limitations and guidelines and new source performance standards for fertilizer manufacturing plants producing ammonium nitrate (AN) and urea (43 FR 17821). To examine pH practices and performance of those plants, EPA evaluated permit compliance monitoring data and made a phone survey of the AN and urea plants that continuously measure and record pH. In the phone survey, EPA confirmed and updated its compliance monitoring data, and noted the treatment method that was being used at each plant. Using those data the Agency established the pH limitations for plants producing ammonium nitrate and urea. The regulations require that pH be maintained within 6.0 to 9.0 at all times.

On July 11, 1978, counsel for eleven companies which manufacture nitrogen fertilizer submitted to EPA a request for reconsideration of the pH regulations for the ammonium nitrate and urea subcategories. The companies also filed four petitions for review of these regulations all of which are now before the U.S. Court of Appeals for the Sixth Circuit.

The request for reconsideration asserts that EPA's data do not support the Agency's position that ammonium nitrate and urea plants can control pH within the range of 6.0 to 9.0 on a continuous basis. Along with the request for reconsideration the industries submitted a two-volume study on pH control of industrial effluents which they believe supports their contention that pH within the range of 6.0 to 9.0 cannot be achieved 100% of the time over an extended period.

Based on a preliminary evaluation of the request for reconsideration and the accompanying study on pH control, EPA has concluded that these pH regulations for AN and urea plants should be withdrawn until the Agency can fully evaluate the industry contractor's study on pH control of industrial effluents and perform its own study.

STATEMENT OF REVOCATION

In consideration of the foregoing:

40 CFR Chapter I, Subchapter N, Part 418, Fertilizer Manufacturing Point Source Category, Subpart C—Urea Subcategory and Subpart D—Ammonium Nitrate is amended by deleting from the tables in §§ 418.32, 418.35, 418.42 and 418.45 the entries which read "pH.....within the range of 6.0 to 9.0.....", and by revoking §§ 418.37 and 418.47, in their entirety.

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

[FR Doc. 79-4653 Filed 2-12-79; 8:45 am]

[1505-01-M]

Title 45—Public Welfare

CHAPTER 1—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Correction

In FR Doc. 79-2291, appearing at page 5258, in the issue of Thursday, January 25, 1979, on page 5265 in the third column, paragraph(b)(2) of § 190.64 should be corrected to read as follows:

* * * * *

(b) * * *

(2) Multiplying the Scheduled Basic Grant by:

the number of credit or clock hours the student is expected to take in a payment period

---

the number of credit or clock hours that a full-time student would take in an academic year

proposed rules

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 725]

FLUE-CURED TOBACCO ACREAGE ALLOTMENT AND MARKETING QUOTA REGULATIONS

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture is considering amending the regulations governing the lease and transfer of acreage allotments and marketing quotas, reporting requirements and marketing of flue-cured tobacco. Experience gained during the 1978-79 marketing season indicates a need for some changes in the regulations that would discourage the overproduction of flue-cured tobacco. Some of the rules currently in effect have encouraged growers, dealers, and warehousemen to violate program regulations. Many of the proposed changes were requested by producers to prevent program abuses. The proposed rule would (1) establish May 1 as the final date to file requests for lease and transfer with provisions for approving late-filed requests; (2) provide that producers on farms with excess acres will not be eligible to lease and transfer quotas (after June 14); (3) require producers to file reports of tobacco on hand at end of season; (4) expand the reporting requirements for dealers and buyers by requiring them to file supplemental reports to include tobacco acquired by them not previously reported in their seasonal report on February 1; and (5) make the provisions for storing carryover tobacco through marketing agents inapplicable to 1979 and subsequent crops of tobacco.

DATES: Comments must be received on or before February 28, 1979, in order to be sure of consideration.

ADDRESSES: Mail written comments to Director, Production Adjustment Division, USDA-ASCS, P.O. Box 2415, Washington, D. C. 20013.

FOR FURTHER INFORMATION CONTACT:

Maurice E. Reddick, Program Specialist, Production Adjustment Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20013. ((202) 447-7935)

SUPPLEMENTARY INFORMATION: The Agricultural Stabilization and Conservation Service is considering amendments to the flue-cured tobacco regulations (7 CFR Part 725), as follows:

1. Section 725.72 would be amended to:

a. Establish May 1 as the final date to file requests for lease and transfer of quotas. Provisions would also be made for approving late-filed requests for transfer provided the county committee, with State committee approval, determines that the lease was agreed upon no later than May 1 and that the late filing was caused by a condition beyond the control of the lessee or lessor. Current rules make the ending lease and transfer date the same as the reporting date for planted acreage. The change would permit leases to be entered into before normal planting time and would authorize county committees to approve bona fide late filed transfer requests.

b. Provide that producers who plant tobacco in excess of their farm acreage allotments will not be eligible to lease and transfer quotas after June 14. The current rule provides loss of price support as the only deterrent to overplanting the acreage allotment. Indications are that loss of price support is no longer a deterrent to the planting of excess acreage. Most producers who overplant their allotments expect to lease sufficient quota to cover their excess planting; however, this magnifies the current problem of high leasing costs.

2. Section 725.98 would be changed to require producers to file a report of tobacco on hand after completion of marketings. An increasing number of growers produce tobacco in excess of their effective marketing quotas. The tobacco on hand oftentimes gets into the channels of trade with no payment of marketing quota penalties. Requiring a report of tobacco on hand provides an administrative tool that can be used to more effectively monitor the production and disposition of excess tobacco.

3. Section 725.102 would be amended to require dealers and buyers who currently file a seasonal report of purchases with the Department to file supplemental reports to reflect tobacco acquired by them which is not included in the seasonal report filed on or before February 1. Reports of additional purchases are needed to reconcile warehouse and dealer accounts and to ensure that marketing quota penalties are collected on excess tobacco.

4. Sections 725.103 and 104 would be made inapplicable to the 1979 and subsequent flue-cured crops but would remain in effect for prior year crops of tobacco placed in storage through marketing agents for marketing in the next marketing year. These provisions for handling carryover tobacco were promulgated in 1973 to provide a convenient means for storage of overproduction due to good growing conditions and other reasons beyond the control of the producer.

Prior to 1973, individual producers of excess tobacco (that in excess of 110 percent of the farm marketing quota) were responsible for storing such excess tobacco if it was to be carried over into the next marketing year, or, if not to be carried over to the next marketing year for satifactorily explaining its disposition to the local county ASC committee.

A report of unmarketed tobacco for the farm was required at the end of the marketing season (this requirement was revoked for the 1975 crop, but is proposed to be reinstated when these rules are finally adopted). For the most part, only small quantities of excess tobacco were reported on hand by producers at the end of the marketing season to be carried over for marketing in the next marketing year. This proposal would not prohibit producers from carrying over for marketing in the next marketing year any excess production of the current year for the farm, provided such excess production is not commingled with the production from other farms prior to marketing or prior to being otherwise disposed of to the satisfaction of the local county ASC committee.

The objective of the carryover program is being abused in that many growers now intentionally produce flue-cured tobacco in excess of their current marketing quotas. This overproduction, collectively, is in excess of the national marketing quota and, even though carryover tobacco cannot be marketed without penalty until the next marketing year, it serves to depress the auction market prices re-

ceived by producers for within quota tobacco during the current marketing year. In addition, some producers of excess tobacco have been able to move undetermined quantities of this surplus tobacco into trade channels during the current year without the payment of marketing quota penalties and without the reduction of future quotas established for their farms to reflect such excess production. Widespread publicity of these practices serves to impair the effectiveness of the marketing quota program.

Further, the carryover program, which has stimulated the production of excess tobacco, has also increases the ever rising costs for leasing quota and has put a greater strain on the limited processing facilities during the marketing season.

Prior to making any determinations, the Department will give consideration to comments, views, and recommendations submitted in writing to the Director, Production Adjustment Division. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3630-South Building, 14th and Independence Avenue, S.W., Washington, D.C.

Because these proposed changes would affect acreage planting and lease and transfer decisions by producers, and since producers will shortly be making final plans for land preparation, seedbeds and may begin transplanting tobacco seedlings into fields in March, it is hereby found and determined that compliance with the 60-day comment period required by Executive Order 12044 is not possible. Accordingly, comments must be received by February 28, 1979 in order to be assured of consideration.

This proposal has been determined not significant under the USDA criteria implementing Executive Order 12044.

Draft Impact Analyses are available from J. A. Wells, Director, Production Adjustment Division, USDA-ASCS, Room 3630-South Building, P.O. Box 2415, Washington, D.C. 20013. Telephone: 202-447-7641.

PROPOSED RULE

It is proposed that 7 CFR Part 725 be amended as follows:

1. In § 725.72, paragraphs (c) (1), (2) and (4) are amended and new subparagraphs (3) (vi) and (vii) are added to read as follows:

§ 725.72 Lease and transfer of tobacco marketing quotas.

* * * * *

(c) *Filing and approval of transfer agreement.*

(1) *General.* The approval or disapproval of an agreement to transfer all or any part of an effective farm marketing quota shall be the responsibility of the country committee, except for late-filed transfers approved under subparagraph (4) of this paragraph. The county committee may redelegate authority to approve transfers to the county executive director or other county office employees.

(2) *Filing transfer agreements.* No lease of any quota under this section shall become effective until a record of transfer, determined by the county committee to be in compliance with the provisions of this section, has been executed on Form ASCS-375 and filed within the time periods prescribed in this section, with the county committee in the county where the farms are administratively located.* * *

(3) *Approval of transfer agreement filed after June 14.** * *

* * * * *

(vi) Not be made if the record of transfer is filed with the county committee after November 30 of the current crop year.

(vii) Not be made if the planted acreage on the receiving or transferring farm exceeds the effective farm acreage allotment or exceeds 110 percent of the effective farm acreage allotment if the farm is a participant in the program for which the farm operator executes an agreement to destroy four leaves of downstalk tobacco.

(4) *Transfers not to be approved.* Except for transfers filed after June 14 under the conditions prescribed in paragraph (c)(3) of this section, a transfer shall not be approved:

(i) If the record of transfer is filed after May 1 of the current crop year except that a record of transfer filed after May 1 but prior to June 15 shall be considered timely filed if the county committee, with approval of the State committee, finds that (a) the lease was agreed upon no later than May 1 of the current crop year, and (b) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the lessee or lessor.

(ii) If after the transfer the lessee farm acreage allotment, plus the acres obtained by dividing the pounds transferred to the lessee farm by the current year's farm yield for such farm, would exceed 50 percent of the cropland on such farm.

(iii) If it is determined that the primary purpose of the transfer for a farm is to pyramid (leasing to and from the farm for a period of two or more years to maintain the quota with no satisfactory evidence of plans for producing the quota during such period) the quota on the farm.

2. In § 725.98, paragraph (f) is revised by inserting a new sentence immediately after the period in the first sentence and revising the current second sentence as follows:

RECORDS AND REPORTS

§ 725.98 Producer's records and reports.

* * * * *

(f) *Report of production and disposition.** * *

The operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request from the county committee, furnish on Form MQ-108-1, Report of Unmarketed Tobacco, a written report of the amount and location of tobacco produced on the farm which is unmarketed at the end of the marketing season and the amount of tobacco produced by such operator or producer on any other farm, which is unmarketed at the end of the marketing season and which is stored on the farm, by sending the report to the county committee within 15 days after the request was mailed to such person at his last known address. Failure to file the MQ-108 or MQ-108-1 as requested, the filing of an MQ-108 or MQ-108-1 which is found by the State or county committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided,* That (i) such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

* * * * *

3. In § 725.102, paragraph (b) is amended to read as follows:

§ 725.102 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.

* * * * *

(b) For the 1973-74 and subsequent marketing years, each dealer or buyer shall also make a report not later than February 1 of each year to the Director, Production Adjustment Division, showing by States where acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or nonauction including tobacco received which was not billed to the dealer or buyer. Any acquisition of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (July 1 through June 30) which is not included in the February 1 report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show: * * *

* * * * * *

4. Section 725.103 paragraph (a) is amended by inserting a new sentence at the beginning.

§ 725.103 Recordkeeping and reporting requirements for processed producer carryover tobacco.

(a) *General.* This section shall not be applicable to 1979 and subsequent crops of tobacco.* * *

* * * * * *

5. Section 725.104 paragraph (a) is amended by inserting a new sentence at the beginning.

§ 725.104 Recordkeeping and reporting requirements for unprocessed producer carryover tobacco.

(a) *General.* This section shall not be applicable to 1979 and subsequent crops of tobacco.* * *

* * * * * *

AUTHORITY: Section 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48 as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995; section 401, 63 Stat. 1054, as amended, sections 106, 112, 125, 70 Stat. 191, 195, 198, as amended, section 16(e), 76 Stat. 606; (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836), (16 U.S.C. 590p(e)).

Signed at Washington, D.C., on February 9, 1979.

STEWART N. SMITH,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-4789 Filed 2-12-79; 8:45 am]

[3410-05-M]

[7 CFR Part 726]

BURLEY TOBACCO MARKETING QUOTA REGULATIONS

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture is considering amending the regulations governing the lease and transfer of marketing quotas, reporting requirements, and marketing of burley tobacco. Indications are that some provisions of current regulations are having the effect of encouraging the production of surplus tobacco. Invariably, overproduction makes program administration more difficult. The proposed rule would make the provisions for storing of tobacco through marketing agents inapplicable to the 1979 and subsequent crops of tobacco; provide that lease and transfer provisions be more restrictive to prevent speculation by producers and warehousemen; and would require producers to file reports of tobacco on hand at the end of the marketing season.

DATES: Comments must be received on or before February 28, 1979 to be sure of consideration.

ADDRESS: Mail comments to Director, Production Adjustment Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Raymond S. Fleming, Program Specialist, Production Adjustment Division, Agricultural Stabilization and Conservation Service, Washington, D.C. 20013, (202) 447-7935.

SUPPLEMENTARY INFORMATION: The Department of Agriculture is considering amendments to the burley tobacco regulations (7 CFR Part 726), as follows:

1. Section 726.68 would be amended to provide that lease and transfers can be made either to or from a farm during the marketing season but not both, with one exception. A farm that previously received leased quota may transfer quota from the farm if the producers so certify and the county committee determines that (1) the acreage planted on such farm was equal to 80 percent of the acreage determined by dividing the effective farm marketing quota by the current farm yield and (2) the production was limited to less than the effective farm marketing quota because of conditions beyond the control of the producer. Current regulations provide that the county committee may approve a transfer (filed for the current year) after July 31 either to or from the same farm (but not both) irrespective of whether any transfer filed before August 1 is in effect for the farm. This has caused widespread speculation on burley quota by farmers and warehousemen. Many producers lease burley quotas to the farm during the planting season (usually when the prices paid for leased quota are low) with no intention of planting any additional acreage but rather intending to sublease the quota away from the farm during the marketing season (usually when prices are higher) thereby making a profit. This practice has magnified the current problem of high leasing costs.

2. Section 726.92 would be changed to require producers to file reports of tobacco on hand after completion of marketings. An increasing number of growers produce tobacco in excess of their effective marketing quotas. The tobacco on hand oftentimes gets into the channels of trade with no payment of marketing quota penalties. Requiring a report of tobacco on hand provides an administrative tool that can be used to more effectively monitor the production and disposition of excess tobacco.

3. Section 726.95 would be amended to require dealers and buyers who currently file a seasonal report of purchases with the Department to file supplemental reports to reflect tobacco acquired by them which is not included in the seasonal report filed on or before April 1. Reports of additional purchases are needed to reconcile warehouse accounts and to ensure that marketing quota penalties are collected on excess tobacco.

4. Sections 726.105 and 106 would be made inapplicable to the 1979 and subsequent burley crops but would remain in effect for prior year crops of tobacco placed in storage through marketing agents for marketing in the next marketing year. These provisions for handling of excess carryover tobacco were promulgated in 1973 to provide a convenient means for storage of excess tobacco inadvertently produced.

Prior to 1973, individual producers of excess tobacco (that in excess of 110 percent of the farm marketing quota) were responsible for storing such excess tobacco if it was to be carried over into the next marketing year, or, if not to be carried over to the next marketing year, for satisfactorily explaining its disposition to the local county ASC committee. A report of unmarketed tobacco for the farm was required at the end of the marketing season (this requirement was revoked for the 1975 crop, but is proposed to be reinstated when these rules are finally adopted). For the most part, only small quantities of excess tobacco were reported on hand by producers at the

end of the marketing season to be carried over for marketing in the next marketing year. This proposal would not prohibit producers from carrying over for marketing in the next marketing year any excess production of the current year for the farm, provided such excess production is not commingled with the production from other farms prior to marketing or prior to being otherwise disposed of to the satisfaction of the local county ASC committee.

The objective of the carryover program is being abused in that many growers now intentionally produce burley tobacco in excess of their current marketing quotas. This overproduction, collectively is in excess of the national marketing quota and, even though carryover tobacco cannot be marketed without penalties until the next marketing year, it serves to depress the auction market prices received by producers for within quota tobacco during the current marketing year. In addition, some producers of excess tobacco have been able to move undetermined quantities of this surplus tobacco into trade channels during the current year without the payment of marketing quota penalties and without the reduction of future quotas, established for their farms, to reflect such excess production. Widespread publicity of these practices serves to impair the effectiveness of the marketing quota program.

Further, the carryover program which has stimulated the production of excess tobacco, has also increased the ever rising costs for leasing quota and has put a greater strain on the limited processing facilities during the marketing season.

Prior to making any determinations, the Department will give consideration to comments, views, and recommendations submitted in writing to the Director, Production Adjustment Division. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3630-South Building, 14th and Independence Avenue, S.W., Washington, D.C.

Because these proposed changes would affect acreage planting and lease and transfer decisions by producers, and since producers will shortly be making final plans for land preparation, seed beds and may begin transplanting tobacco seedlings into fields in March, it is hereby found and determined that compliance with the 60-day comment period required by Executive Order 12044 is not possible. Accordingly, comments must be received by February 28, 1979 in order to be assured of consideration.

This proposal has been determined not significant under the USDA criteria implementing Executive Order 12044.

Draft Impact Analyses are available from J. A. Wells, Director, Production Adjustment Division, USDA-ASCS, Room 3630-South Building, P.O. Box 2415, Washington, D.C. 20013, telephone 202-447-7641.

PROPOSED RULE

It is proposed that 7 CFR Part 726 be amended as follows:

1. Section 726.68(n) is revised to read as follows:

§726.68 Transfer of Burley Tobacco Farm Marketing Quota by Lease or by Owner.

* * * * *

(n) *Limitation on transfer to and from a farm (subleasing).* The county committee shall not approve any transfer filed for the current year if, after approval, a transfer would be in effect both to and from the same farm, except as follows:

(1) A transfer may be approved if the quota is temporarily transferred from a farm subsequently combined with another farm that is otherwise eligible to receive quota by transfer.

(2) After October 1 a transfer may be approved for a farm that previously received leased quota for the current year provided the producers so certify and the county committee determines that the (i) acreage of burley tobacco planted on the farm was equal to at least 80 percent of the acreage determined by dividing the effective marketing quota by the current farm yield for the farm, and (ii) the production of tobacco was limited to less than the effective farm marketing quota because of conditions beyond control of the producer.

* * * * *

2. Section 726.92 paragraph (e) is amended by inserting a new sentence immediately after the period in the first sentence and revising the current second sentence as follows:

RECORDS AND REPORTS

§726.92 Producer records and reports.

* * * * *

(e) *Report of production and disposition.* * * *

The operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request from the county committee, furnish on Form MQ-108-1, Report of Unmarketed Tobacco, a written report of the amount and location of tobacco produced on the farm which is unmarketed at the end of the marketing season and the amount of tobacco produced by such operator or producer on any other farm, which is unmarketed at the end of the marketing season and which is stored on the farm, by sending the report to the county committee within 15 days after the request was mailed to such person at his last known address. Failure to file the MQ-108 or MQ-108-1 as requested, the filing of an MQ-108 or MQ-108-1 which is found by the State or county committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure of the producer to account for disposition of tobacco produced on the farm and the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided,* That (i) such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided or acquiesced in the failure to furnish such proof.

* * * * *

3. Section 726.95, paragraph (b), is revised as follows:

§726.95 Dealers exempt from regular records and reports on MQ-79; and season reports from dealers.

* * * * *

(b) For the 1971-72 and subsequent marketing years, each dealer or buyer shall also make a report not later than April 1 of each year to the Director, Production Adjustment Division, showing by States were acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or non-auction including tobacco received which was not billed to the dealer or buyer. Any acquisitions of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (October 1 through September 30) which is not included in the April 1 report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show * * *

4. Section 726.105, paragraph (a), is amended by inserting a new sentence at the beginning.

§ 726.105 Recordkeeping and reporting requirements for processed producer carryover tobacco.

(a) *General.* This section shall not apply to burley tobacco produced in the 1979 and subsequent crop years. * * *

5. Section 726.106, paragraph (a), is amended by inserting a new sentence at the beginning.

§ 726.106 Recordkeeping and reporting requirements for unprocessed producer carryover tobacco.

(a) *General.* This section shall not apply to burley tobacco produced in the 1979 and subsequent crop years. * * *

* * * * *

AUTHORITY: (Secs. 301, 312, 313, 314, 316, 318, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 80 Stat. 120, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206 as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301 1312, 1314, 1314b, 1314d, 1363, 1372-1375, 1377, 1378, Public Law 92-10 approved April 14, 1971)

Signed at Washington, D.C., on February 9, 1979.

STEWART N. SMITH,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-4790 Filed 2-12-79; 8:45 am]

[3410-05-M]

Commodity Credit Corporation

[7 CFR Part 1464]

TOBACCO LOAN PROGRAM

Proposed 1979 Price Support Levels and Program Procedures

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation is preparing to determine and announce the levels of support and the procedures for making price support available to producers of 1979 crop tobacco. The levels of support must, if practicable, be announced prior to the planting season. This proposal would also: (1) Continue the method of supporting tobacco through loans to producer associations and through purchases of Puerto Rican tobacco; (2) Reduce the acreage limitation for flue-cured tobacco when the 4 lower leaves are not harvested and (3) Terminate price support eligibility on 1979 and subsequent crops of flue-cured and burley tobacco which are packed for a producer's account by a loan association and carried over from one marketing year to another. You are invited to submit views and recommendations with respect to this proposal.

DATE: Written comments must be received by February 28, 1979, in order to be sure of consideration.

ADDRESS: Send comments to Acting Director, Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Thomas A. VonGarlem, (202) 447-3391.

SUPPLEMENTARY INFORMATION: The Agricultural Act of 1949, as amended, (the "Act") requires the Secretary through loans, purchases and other operations, to make price support available on any crop of tobacco for which marketing quotas are in effect, or for which marketing quotas have not been disapproved by producers. Under section 106 of the Act, the level of support in cents-per-pound for each crop of each kind of tobacco for which marketing quotas are in effect, or for which marketing quotas are not disapproved, is mandatory at the support level for the 1959 crop of such kind of tobacco, multiplied by the ratio of (i) the average of the index of prices paid by farmers for the three calendar years immediately preceding the calendar year in which the marketing year begins for the crop for which the support level is being determined to (ii) the average index of prices paid by farmers for the 1959 calendar year. The average of the index of such prices paid for calendar years 1976-78 will be used in computing the 1979 tobacco support levels. The average is 695. The average index of prices paid for the calendar year 1959 is 298. The resulting ratio is 2.33. Thus, the support level for the 1979 crop of each eligible kind of tobacco will be 233 percent of the 1959 level, effective upon approval by Commodity Credit Corporation.

Prior to the beginning of the marketing season for each eligible kind of tobacco, pursuant to section 403 of the Act, Commodity Credit Corporation will issue proposed loan rates for the various types and grades of tobacco, and comments on such rates may be made at that time.

Tobacco would continue to be supported through loans on all eligible kinds of tobacco except Puerto Rican tobacco, and Puerto Rican tobacco would continue to be supported through purchases. Regulations currently in effect with respect to the tobacco price support program are set forth in 7 CFR Part 1464. The Commodity Credit Corporation is considering changes in those regulations as follows:

Under current regulations, flue-cured tobacco producers' eligibility for price support is, among other things, conditioned on the tobacco being produced on (i) the farm acreage allotment or (ii) 120 percent of the farm acreage allotment if the 4 lower leaves (usually consisting of low quality tobacco for which there is little demand) are not harvested. The less restrictive acreage limitation for producers who do not harvest the 4 lower leaves was put in effect in 1978 to accommodate increased production of upper stalk tobacco with offsetting decreases in the production of the lower stalk tobacco. Comments have been received which indicate that in the production of the 1978 crop, producers generally found that additional acreage of only 10 percent is necessary to offset the reduced yields per acre which result from not harvesting the 4 lower leaves. It is therefore proposed to reduce to 110 percent the acreage limitation applicable when the 4 lower leaves are not harvested.

Under current regulations, eligible producers of flue-cured and burley tobacco may obtain price support on eligible tobacco which has been packed for their account by an association and carried over from the previous marketing year to avoid marketing in excess of farm marketing quota. This provision was designed to provide a convenient means for a producer to carry over tobacco for marketing the following year, when unusually high yields resulted in production in excess of the current year's farm marketing quota. It now appears that the carryover provision is encouraging producers to deliberately produce tobacco in excess of their marketing quotas. Such overproduction burdens the marketing facilities and tends to escalate the cost of leasing tobacco quotas. This proposal would terminate the carryover provision under which price support may be obtained on 1979 and subsequent crops of tobacco produced and packed by a marketing agent in the previous year. However, this amendment would not prevent an eligible producer from obtaining price support on otherwise eligible tobacco, carried over by the producer from one year to the next.

This regulation has been determined not significant under the USDA criteria for implementing Executive Order 12044.

Because these proposed changes in regulations would have substantial impact on acreage planting intentions of producers, and since producers will shortly be finalizing plans for land preparation and seed beds and may begin transplanting tobacco seedlings into fields in March, it is hereby found and determined that compliance with the 60-day comment period required

by Executive Order 12044 is contrary to the public interest. Accordingly, comments must be received by February 28, 1979 in order to be assured of consideration.

PROPOSED RULE

It is proposed that 7 CFR Part 1464 be amended by adding a new sentence at the beginning of paragraph (e)(3)(ii) of § 1464.2, as amended paragraph (e)(3)(ii) reads as follows:

§ 1464.2 Availability of price support.

* * * * *

(e)(3) * * *

(ii) This paragraph shall not apply to the 1979 and subsequent crops of flue-cured and burley tobacco. Eligible producers of flue-cured and burley tobacco may, subject to the provisions of this subdivision, obtain price support on eligible tobacco which has been packed for their account by the association and carried over from one marketing year to another to avoid marketing in excess of the farm marketing quota. Price support advances obtained on such packed tobacco shall be at the rates in effect at the time of tender for loan, and on the basis of grades and quantities of the tobacco as determined at the time of delivery to the association for packing and carryover. If all the tobacco packed from the tobacco delivered to the association for packing and carryover is not tendered for price support, or if the packed tobacco tendered for price support is commingled tobacco of different producers, the price support advances will be computed as follows: For each packed grade of tobacco, the loan value will be computed on the basis of (*a*) the total pounds of each green grade used in processing the packed quantity and (*b*) the grade loan rates applicable to such green grades. Loan advances may by obtained on the quantity of each packed grade tendered for price support in an amount equal to the loan value so determined, multiplied by the percentage which the pounds of the packed grade tendered is of the total packed weight of such grade. An individual producer's share of the loan advance obtained on the tender of any quantity of a packed grade shall be a percentage of such advance equal to the percentage which the loan value of all the tobacco delivered by the producer for packing and carryover is of the loan value of all the tobacco delivered by all producers for packing and carryover. Packed tobacco tendered for price support shall be in sound and merchantable condition and shall have been processed and packed under the standards and specifications which were applied to the tobacco received for price support during the immediately preceding crop year.

Prior to tendering packed tobacco for price support, the association shall determine what percentage of the tobacco which was received for packing and carryover is eligible.

The packed tobacco tendered for price support shall not be a greater percentage of the total quantity packed than the percentage so determined.

(4) * * *

It is proposed to revise subparagraph (2), (2)(i) and (2)(ii) of § 1464.7(a) as follows:

§ 1464.7 Eligible producers.

(a) * * * (2) all the tobacco produced on his/her farm is produced on acreage which does not exceed the acreage allotment, or if flue-cured tobacco, does not exceed: (i) The acreage allotment established for his/her farm; or (ii) 110 percent of the acreage allotment established for his/her farm in instances where the producer has left unharvested the 4 lower leaves, exclusive of plant bed leaves, on each stalk of tobacco produced on his/her farm and has previously entered into agreement to do so with the local ASC county committee in accordance with procedures to be established by the Deputy Administrator, State and County Operations, ASCS; and (3) * * *

Prior to making any determination, the Department will give consideration to comments, views, and recommendations submitted in writing to the Acting Director, Price Support and Loan Division. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in Room 3741-South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20013.

Draft Impact Analysis Statements are available from Thomas A. VonGarlem, Acting Director, Price Support and Loan Division, Room 3741-South Building, P.O. Box 2415, Washington, D.C. 20013.

Signed at Washington, D.C. on: February 9, 1979.

STEWART N. SMITH,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-4788 Filed 2-12-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Part 241]

[EDR-286-A, Docket No. 28082, dated February 7, 1979]

TERMINATION OF A PROPOSED RULE TO REQUIRE REPORTING OF AVAILABLE SEAT-MILES BASED ON CAB SEATING STANDARDS

AGENCY: Civil Aeronautics Board.

ACTION: Notice of termination of rulemaking.

SUMMARY: The Board is terminating a Notice of Proposed Rulemaking dated July 15, 1975, which proposed to establish specific numbers of seats for different aircraft types based upon the carriers' actual percentage mix of first class and coach seats. The proposal would also have required trunk carriers to report available seat-miles based on the prescribed number of seats in addition to available seat-miles based on the actual number of seats installed on air carrier aircraft which these carriers were already reporting. The Board will not be incorporating the proposed rule into its Economic Regulations because the Airline Deregulation Act of 1978 makes it unnecessary to consider aircraft seating configurations in regulating air fares.

DATED: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Carrier Accounts and Audits, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5270.

SUPPLEMENTARY INFORMATON: In EDR-286, dated July 15, 1975 (40 FR 30497, July 21 1975), the Board proposed to implement reporting of available seat-miles based on specific numbers of aircraft seats for different aircraft types. Aircraft manufacturer's designs were used as a starting point for developing specific numbers of seats in conformity with seat pitch and abreast seating standards established by the Board in Phase 6A of the *Domestic Passenger Fare Investigation* (Docket 21866-6A). Within this framework, different numbers of seats were developed for each aircraft type according to the percentage mix of first class and coach seats actually being used by the reporting carrier.

The comments received raised theoretical and practical questions; first as to whether the Board should prescribe specific numbers of seats and second as to the methodology employed in developing the numbers. It might be added that alternatives, in those cases where they were offered by respondents, tended to cloud the path to a so-

lution which would be widely accepted.

At the time the proposed rule was issued, the ratemaking implications of less productive seating configurations being operated by some carriers were already being taken into consideration in ratemaking adjustments made by the Bureau of Economics (now the Bureau of Pricing and Domestic Aviation). Since there was no urgent need for the refinements the proposed rule would establish, further action on the proposal was delayed while staff consideration continued and other alternatives were explored.

In 1977, carriers were granted greater freedom to engage in competitive pricing with a more liberal Board policy toward discount fares. This acted as more natural incentive for carriers to move from the posture of nonprice competition which tended to encourage more spacious accommodations than needed for adequate and efficient service.

Now, with the enactment of the Airline Deregulation Act of 1978 (Pub L. 95-504) on October 24, 1978, detailed considerations of aircraft configurations have become unnecessary.

The new law is quite specific in its amendment of Section 1002 of the Federal Aviation Act that the standard industry fare level in effect on July 1, 1977, shall be increased or decreased by * * * the percentage change from the last previous period in the *actual* operating cost per available seat-mile-for interstate and overseas transportation combined" [1] (emphasis added). Further, the same subsection of the amended Act states that in determining the standard, the Board shall make no adjustment to costs actually incurred.

There is, therefore, no need for the seating standards or the reporting proposed in EDR-286.

Accordingly, the Board terminates the rulemaking proceeding in Docket 28082 without amending Part 241 of its Economic Regulations.

(Sec. 204(a), 407, Federal Aviation Act of 1978, as amended, 72 Stat. 743, 766; (49 U.S.C. 1324(a), 1377).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4757 Filed 2-12-79; 8:45 am]

[1] Section 1002(d)(6)(B) of the Federal Aviation Act of 1958, as amended.

[6320-01-M]

[14 CFR Part 302]

[PDR-62; Docket No. 34679, Dated February 7, 1979]

RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Notice to Alaskan Field Office

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The proposed action would amend the Rules of Practice in Economic Proceedings to require an additional copy of any document filed with the Civil Aeronautics Board in a route proceeding that affects a point in Alaska to be sent to the Alaskan field office.

DATES: Comments by March 16, 1979.

ADDRESSES: Comments should be sent to Docket 34679, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Docket comments may be examined at the Docket Section, Civil Aeronautics Board, Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Office of General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: The Alaskan field office of the Civil Aeronautics Board has asked the Board to take action to ease the problems that arise from the amount of time it takes for copies of documents filed with the Board to be transmitted to Alaska. The field office frequently does not get its copy in time to post the document in a public place to allow local interested individuals, businesses, and community groups to review the document and submit comments before the deadline set by the Board.

The proposed amendment to the rules will state that any person filing documents with the Board in a route proceeding that affects a point in Alaska will be required to send an additional copy to the Alaskan field office.

PROPOSED RULE

The Board proposes to amend § 302.3 of 14 CFR Part 302, *Rules of Practice in Economic Proceedings* by adding a new sentence in paragraph (c) so that it reads as follows:

§ 302.3 Filing of documents.

* * * * *

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Docket Section. In any route proceeding that affects a point in Alaska, the person filing shall send an additional copy to: Civil Aeronautics Board Field Office, Anchorage, Alaska 99501. The copies need not be signed but the name of the person signing the document, as distinguished from the firm or organization he represents, shall also be typed or printed on all copies below the space provided for signature.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324(a)).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4758 Filed 2-12-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 761 0007]

APPLIANCE DEALERS COOPERATIVE, ET AL.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Newark, N.J. appliance dealers cooperative, its executive director, 22 member companies, and five affiliated firms to cease harassing, intimidating or otherwise attempting to control or interfere with retailers resale pricing; advertising; sale and distribution of consumer products; selection of customers; or their right to locate and operate businesses in any geographic area. The cooperative would further be required to supply its members, on an equal and timely basis, with all relevant information relating to its purchase and sale of merchandise; and cause its by-laws to be adjusted so as to be consistent with the terms of the order.

DATE: Comments must be received on or before April 14, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and

Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Leroy Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243-EB Federal Building, 26 Federal Plaza, New York, N.Y. 10007. (212) 264-1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[Document No. 88800001; File No. 7610007]

APPLICANCE DEALERS COOPERATIVE, ET AL.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Appliance Dealers Cooperative, a corporation, and Murray Gidseg, individually and as Executive Director of said corporation, and Ace Electronic Service Co., Inc., a corporation, and Solar Appliance Centers, Inc., a corporation, and Ajay Appliance Sales & Service, Inc., a corporation, and Apex Appliance Distributors, Inc., a corporation, and Bell Appliance Co., Inc., a corporation, and Paul Bergman, an individual trading and doing business as Brown's Appliance Co., and Charles Stein, an individual trading and doing business as Economy Stove & Plumbing Supply Co., and Flynn Appliances, Inc., a corporation, and Frank Schwartz, an individual trading and doing business as Franks Sales & Service Co., and Goldklang's Appliance City, Inc., a corporation, and Town Appliance, Inc., a corporation, and Harvey's of New Milford, Inc., a corporation, and Karl's Sales & Service Co., Inc., a corporation, and Keystone Appliance Co., Inc., a corporation, and Lichtman Bros. Inc., a corporation, and Mrs. G. Inc., a corporation, and Paul's Home Furnishings Co., Inc., a corporation, and Rooney Appliance, Inc., a corporation, and Schenck Appliance Corporation, a corporation, and Summerton Appliance, Inc., a corporation, and Les Turchin, Inc., a corporation, and Tru-Home Sales Co. Inc., a corporation, and Turchin's Department Stores, Inc., a corporation, and Turchin's-Rex, Inc., a corporation, and Uneeda Appliance Co., Inc., a corporation, and Uneeda Brook's, Inc., a corporation, and Uneeda Appliance Company of Bayonne, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the persons and firms named in the caption hereof, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated;

It is hereby agreed by and between Appliance Dealers Cooperative, a corporation by its duly authorized officer, and Murray Gidseg, individually and as Executive Director of said corporation and Ace Electronic Service Co., Inc., Solar Appliance Centers, Inc., Ajay Appliance Sales & Service, Inc., Apex Appliance Distributors, Inc., Bell Appliance Co., Inc., Flynn Appliances, Inc., Goldklang's Appliance City, Inc., Town Appliance, Inc., Harvey's of New Milford, Inc., Karl's Sales & Service Co., Inc., Keystone Appliance Co., Inc., Lichtman Bros. Inc., Mrs. G. Inc., Paul's Home Furnishings Co., Inc., Rooney Appliance, Inc., Schenck Appliance Corporation, Summerton Appliance, Inc., Les Turchin, Inc., Tru-Home Sales Co. Inc., Turchin's Department Stores, Inc., Turchin's-Rex, Inc., Uneeda Appliance Co., Inc., Uneeda Brook's, Inc., and Uneeda Appliance Company of Bayonne, Inc., corporations, by their duly authorized officers and Paul Bergman, an individual trading and doing business as Brown's Appliance Co., Charles Stein, an individual trading and doing business as Economy Stove & Plumbing Supply Co., Frank Schwartz, an individual trading and doing business as Franks Sales & Service Co., and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Appliance Dealers Cooperative is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its home office and principal place of business located at 84 Lockwood Street, Newark, New Jersey.

Proposed respondent Murray Gidseg is Executive Director of Appliance Dealers Cooperative and as such is the chief executive officer of the corporation. He cooperates and acts together with other respondents to formulate, direct and control the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

Proposed respondents Ace Electronic Service Co., Inc., (hereinafter Ace) and Solar Appliance Centers, Inc. (hereinafter Solar) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Ace maintains its home office and principal place of business at 69 Highway 35, Neptune City, New Jersey 07753. Solar maintains its home office and principal place of business at 2114 Route 88, Bricktown, New Jersey 08723.

Proposed respondent Ajay Appliance Sales & Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 1021 Route 37 West, Toms River, New Jersey 08753.

Proposed respondent Apex Appliance Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 700 Rahway Avenue, Elizabeth, New Jersey 07202.

Proposed respondent Bell Appliance Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at Highway 22, Union, New Jersey 07083.

Proposed respondent Paul Bergman is an individual trading and doing business as Brown's Appliance Co. with its home office and principal place of business located at 276 Main Street, Paterson, New Jersey 07505.

Proposed respondent Flynn Charles Stein is an individual trading and doing business as Economy Stove & Plumbing Supply Co. with its home office and principal place of business located at 1047 Elizabeth Avenue, Elizabeth, New Jersey 07201.

Proposed respondent Appliances, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 44 Grand Avenue, Englewood, New Jersey 07631.

Proposed respondent Frank Schwartz is an individual trading and doing business as Franks Sales & Service Co. with its home office and principal place of business located at 739 Main Avenue, Passaic, New Jersey 07055.

Proposed respondents Goldklang's Appliance City, Inc. (hereinafter Goldklang's) and Town Appliance, Inc. (hereinafter Town) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Goldklang's maintains its home office and principal place of business at 462 Broadway, Bayonne, New Jersey 07002. Town maintains its home office and principal place of business at Route 46, Rockaway, New Jersey 07866.

Proposed respondent Harvey's of New Milford, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 690 River Road, New Milford, New Jersey 07646.

Proposed respondent Karl's Sales & Service Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 111 Washington Avenue, Belleville, New Jersey 07109.

Proposed respondent Keystone Appliance Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 4237 Bergen Turnpike, North Bergen, New Jersey 07047.

Proposed respondent Lichtman Bros. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 101-105 Smith Street, Perth Amboy, New Jersey 08861.

Proposed respondent Mrs. G. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 2960 Brunswick Pike, Trenton, New Jersey 08638.

Proposed respondent Paul's Home Furnishings Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 121 New York Avenue, Newark, New Jersey 07105.

Proposed respondent Rooney Appliance, Inc. is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New Jersey, with its home office and principal place of business at 500 Market Street, Saddle Brook, New Jersey 07662.

Proposed respondent Schenck Appliance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at Route 88 and Laurelton Circle, Bricktown, New Jersey 08723.

Proposed respondent Summerton Appliance, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 300 Route 9, Englishtown, New Jersey 07726.

Proposed respondent Les Turchin, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 98-100 Albany Street, New Brunswick, New Jersey 08901.

Proposed respondent Tru-Home Sales Co. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 321-16th Avenue, Newark, New Jersy 07103.

Proposed respondents Turchin's Department Stores, Inc. (hereinafter Turchin's) and Turchin's-Rex, Inc. (hereinafter Turchin's-Rex) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Turchin's maintains its home office and principal place of business at 116 N. Wood Avenue, Linden, New Jersey 07036. Turchin's-Rex maintains its home office and principal place of business at 2385 Kennedy Boulevard, Jersey City, New Jersey 07304.

Proposed respondents Uneeda Appliance Co., Inc. (hereinafter Uneeda), Uneeda Brook's, Inc. (hereinafter Uneeda Brook's) and Uneeda Appliance Company of Bayonne, Inc. (hereinafter Uneeda Bayonne) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Uneeda maintains its home office and principal place of business at 2973 Kennedy Boulevard, Jersey City, New Jersey 07306. Uneeda Brook's maintains its home office and principal place of business at 9 West Main Street, Somerville, New Jersey 08876. Uneeda Bayonne maintains its home office and principal place of business at 432 Broadway, Bayonne, New Jersey 07002.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contains a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to-order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That respondent Appliance Dealers Cooperative, a corporation, (hereinafter referred to as ADC) and respondent Murray Gidseg, individually and as Executive Director of ADC and said respondents' agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of consumer appliances and products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, cease and desist from either individually doing, engaging in or performing any of the following acts, practices or policies or entering into, carrying out, cooperating or acquiescing in any common course of action, understanding, agreement or combination, whether express or implied, between said respondents or between any one or more of them and any other person or firm to do or perform any of the following:

1. Establish, tamper with, maintain, raise, stabilize or control the prices at which consumer appliances and products may be advertised, offered for sale or sold by any retailer.

2. Restrict, limit or otherwise interfere with the right of any retailer of consumer appliances and products to sell such products to any other person or firm.

3. Agree with any other person or firm to refuse to resell consumer appliances and products to any member of ADC unless the member is approved, authorized or franchised by suppliers to receive their merchandise.

4. Restrict, limit or otherwise interfere with the right of any retailer to locate and operate retail stores in any geographic area or territory.

5. Harass, intimidate, coerce or otherwise interfere with any person or firm if an actual or potential effect of such conduct would be to cause or permit any of the acts, practices or policies prohibited by paragraphs one (1) through four (4) of this order.

6. Knowingly withhold or hold back from members or other customers of ADC any purchase price information or any information relating to the amounts of rebates, allowances or discounts due said members or other customers of ADC for merchandise purchased from or through ADC, or take or withhold any other action which has, or may have, the effect of impeding or preventing members or other customers of ADC from determining their net cost for consumer appliances and products at the time of purchase.

7. Communicate, circulate or exchange any information or material which has the purpose or effect of causing any of the acts, practices or policies prohibited by paragraphs one (1) through six (6) of this order.

II

It is further ordered, That Ace Electronic Service Co., Inc., Solar Appliance Centers, Inc., Ajay Appliance Sales & Service, Inc., Apex Appliance Distributors, Inc., Bell Appliance Co., Inc., Paul Bergman, an individual trading and doing business as Brown's Appliance Co., Charles Stein, an individual trading and doing business as Economy Stove & Plumbing Supply Co., Flynn Appliances, Inc., Frank Schwartz, an individual trading and doing business as Franks Sales & Service Co., Goldklang's Appliance City, Inc., Harvey's of New Milford, Inc., Karl's Sales & Service Co., Inc., Keystone Appliance Co., Inc., Lichtman Bros. Inc., Mrs. G. Inc., Paul's Home Furnishings Co., Inc., Town Appliance, Inc., Rooney Appliance, Inc., Schenck Appliance Corporation, Summerton Appliance, Inc., Les Turchin, Inc., Tru-Home Sales Co. Inc., Turchin's Department Stores, Inc., Turchin's-Rex, Inc., Uneeda Appliance Co., Inc., Uneeda Brook's, Inc., Uneeda Appliance Company of Bayonne,Inc. (hereinafter referred to as respondent retailers) and said respondent retailers' successors, assigns, officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the offering for sale, sale or distribution of consumer appliances and products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall not, either individually or collectively:

Engage in, carry out, cooperate, or acquiesce in any act, practice or policy or any common course of action, understanding, agreement or combination between any two or more of said respondent retailers or between any one or more of them and respondent ADC or respondent Murray

Gidseg, their representatives, agents, designees, successors and assigns, if an effect would be to restrict, interfere, or tamper with the purchase, advertising, pricing, offering for sale, sale or distribution of consumer appliances and products, the selection of customers, or the location of places of business by any person or firm, or between any one of more of said respondent retailers and any other person or firm, if any effect would be to restrict, interfere, or tamper with the purchase, advertising, or pricing of consumer appliances and products, or the location of places of business by any person or firm.

III

It is further ordered, That respondent ADC, either directly or through its representatives, designees, successors and assigns, shall disclose to ADC members on an equal and timely basis all material matters considered and actions taken at all board, committee, membership and subgroup meetings or by the membership, or any board, committee or subgroup which affect, or may affect, the business of ADC including, without limitation, all information relating to the purchase or sale by ADC of consumer appliances and products purchased or to be purchased by or on behalf of ADC, its agents, representatives or designees.

IV

It is further ordered, That respondent ADC, either directly or through its representatives, designees, successors and assigns, shall provide adequate and equal prior notice to each ADC member, of all meetings (except as to meetings of committees or subgroups provided for in paragraph V below) at which merchandise matters are to, or may, be discussed or considered. If any member of ADC shall be permitted to attend any such meeting, then all members of ADC shall be provided with an opportunity to attend and participate in such meeting and related discussions and matters.

V

It is further ordered, That the officers and directors of ADC, annually, shall appoint the representatives of members of ADC to serve as members of committees or subgroups, including committees and subgroups involved in dealings with manufacturers, distributors or suppliers. Such appointments shall be made on a fair, impartial and non-discriminatory basis, shall be determined on the basis of the trade experience and expressed desires of the respective members of ADC and shall not be determined, directly or indirectly, on the basis of the size or volume of purchases of any member or such member's status as an officer or director of ADC. If any member of ADC has expressed a desire to have its representative serve as a member of a committee or subgroup involved in dealings with manufacturers, distributors or suppliers and has been denied such membership for a particular year, such member shall have the right to have a representative attend, in a non-voting capacity, all meetings and activities of such committee or subgroup, and shall be entitled to receive timely notices thereof to the extent possible in the normal course of business. All notices of meetings and activities shall be communicated on an equal basis to all members of ADC which are entitled to have a representative attend such meetings or activities.

VI

It is further ordered, That respondent ADC notify the Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment, sale, or reorganization resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change which may affect compliance obligations arising out of this order.

VII

It is further ordered, That at the next meeting of the Board of Directors of respondent ADC, which shall in no event be later than thirty (30) days from the date of service of this order, said Board of Directors shall cause the by-laws of ADC to be amended to include each of the paragraphs of this order and shall terminate and cancel any rule, articles, resolution, regulation or by-law of ADC which is contrary to or inconsistent with any provision of this order.

VIII

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

APPLIANCE DEALERS COOPERATIVE ET AL.

[File No. 761-0007]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order from Appliance Dealers Cooperative, Murray Gidseg, its executive director, twenty-two member companies and five additional companies that are affiliated with member companies through common ownership.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint in this matter alleges that ADC, acting through its executive director and certain of its members: tampered and otherwise interfered with the retail prices at which the members and their affiliates (hereinafter respondent retailers) sold consumer appliances and products; prevented or inhibited transshipping of said products by the respondent retailers to other dealers; allocated geographic territories in which members could operate retail stores; and harassed, intimidated and coerced members who failed to adhere to the aforementioned restrictive policies and practices.

The proposed order prohibits respondents from engaging in individual acts or agreements among themselves or with others to: Control or tamper with the retail prices of the proposed respondent retailers; interfere with the right of any retailer to sell products to any other person or firm; refuse to sell products to certain members; restrict the right of any retailer to locate and operate retail stores in any geographic area and harass or intimidate any person or firm in order to cause or effectuate such restrictive practices.

The proposed order contains provisions which insure that the proposed respondent retailers are free to price and market the products which they purchase from ADC as they see fit. In addition, the order contains provisions that will insure that all members of ADC will receive, on an equal and timely basis, all material information relating to the business of ADC including all information relating to the purchase or sale of merchandise by ADC.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-4750 Filed 2-12-79; 8:45 am]

[6750-01-M]

[16 CFR Part 13]

[File No. 782 3000]

INTERMATIC, INC.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Spring Grove, Ill., manufacturer and distributor of electrical devices to cease misrepresenting energy or cost savings that may be realized through the use of its water heater timer without disclosing that use of the timer would decrease the quantity and temperature of hot water used, and adversely affect dishwasher operations. The firm would be required to make relevant disclosure statements in product advertising, labeling and instructions; and recall all previously disseminated material which fails to conform with the terms of the order. Additionally, the firm would be required to continue its existing refund policy; and maintain specified records for designated time periods.

DATE: Comments must be received on or before April 14, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

William C. Erxleben, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442-4655.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

In the Matter of Intermatic Incorporated, a corporation; (File No. 782 3000) agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Intermatic Incorporated ("Intermatic"), it now appears that proposed respondent Intermatic is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Intermatic, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a Delaware corporation which has its office and principal place of business located at Intermatic Plaza, Spring Grove, Illinois 60081.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to the agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint, will be placed on the public record for a period of sixty days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives all rights to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that proposed respondent may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

This order applies to respondent Intermatic Incorporated ("Intermatic"), its successors, assigns, officers, agents and employees, whether acting directly or through any corporation subsidiary, division or other device. Order provisions apply to any acts taken in connection with Intermatic's advertising, displaying, offering for sale, sale or distribution of electric water heater timers except that paragraphs I.C., X., XI., and XII. also apply to any other electric appliance or device which is promoted, displayed, offered for sale or distributed directly or indirectly to consumers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

I. *It is ordered* that Intermatic cease and desist from representing, directly or by implication, that:

A. Use of Intermatic's water heater timers will result in substantial savings on hot water heating bills without significant reduction in the temperature or quantity of hot water used, except where the savings would be attributable to the consumer's use of the timer to take advantage of utilities' discount or time-of-day rates.

B. Significant cost savings from the use of the water heater timer are attributable to saving energy used by water heaters during periods when no hot water is being drawn off. This subparagraph does not prohibit respondent from making any respresentation that meets the requirements of subparagraph I.C., below.

C. Any energy or cost savings can be realized by any electric appliance or device unless Intermatic has a reasonable basis in valid scientific studies or tests from which to conclude that typical consumers, in the areas in which the representations are disseminated, will achieve those savings under expectable and usual consumer usage.

II. *It is further ordered* that Intermatic make the following affirmative disclosures in any advertisement or promotional, labeling, or packaging material for its water heater timer:

A. That cost savings are accompanied by a decrease in the quantity and temperature of hot water available.

B. That dishwashers should be used during certain periods of the timer's cycle in order to operate properly.

The above affirmative disclosures shall be made clearly and conspicuously. The disclosure required in subparagraph II.A. shall be in close conjunction with and in type size at least as large as any reference to cost savings. In the case of packaging materials these disclosures need be made only once; the disclosure required in subparagraph II.A shall be on the most prominent face of each packaging material.

The above affirmative disclosures need not be made in any advertisement: (1) which is disseminated only in areas where some form of discount or time-of-day rates are offered by local utilities or where such rates are reasonably foreseeable; and (2) where no cost savings claim is made except a claim that the water heater timer provides savings by turning the water heater off during periods of higher rates.

The affirmative disclosure contained in subparagraph II.B. need not be made in advertising prepared by customers of respondent and for which respondent pays only part of the cost; provided that the advertising appears as part of a multi-product advertisement the portion of which advertisement relating to the Intermatic water heater timer is no greater than eleven (11) square inches and the purpose of which is only to make the availability of the product at the retail outlet known.

III. *It is further ordered* that Intermatic's instructions or directions for use of its water heater timer contain the following information in clear lay language:

A. The affirmative disclosures in paragraph II above. Type size shall be the same as (or larger than) that of the rest of the instructions or directions.

B. A statement that when the timer is off, the temperature of the water in the tank will decline. An explanation that if the consumer increases the amount of water drawn from the hot water tank as the temperature drops (such as by adjusting the hot/cold mix at a faucet) or uses any hot water during the "off" periods of the timer the temperature of available hot water will be decreased.

C. A method for using a dishwasher in order to have hot water available at the maximum temperature.

D. That the local electrical utility should be contacted to determine how to use timers on water heaters to avoid or minimize peak load demand problems for the utility.

E. A statement that in the event that the electrical utility serving the consumer introduces lower rates for "off peak" electrical consumption, the consumer should contact the utility to determine the "off-peak" periods so as to take advantage of lower rates.

IV. *It is further ordered* that Intermatic immediately recall from all persons and entities that have engaged in the advertising, promotion, sale or distribution of the Intermatic water heater timer since January 1, 1977 (or request the disposal of) all advertising mats and promotional materials which contain a representation prohibited by this Order or which omit a disclosure required by this Order.

V. *It is further ordered* that Intermatic prepare and distribute to all Intermatic customers who may reasonably be expected to have remaining stocks of the Intermatic water heater timer on hand, replacement packaging materials and instructions to con-

form with the terms of this Order. Intermatic shall ask its customers to replace the packaging materials and instructions with the new ones provided, prior to making a further sale of the Intermatic water heater timer. In lieu of replacing the packaging materials Intermatic may provide its customers with self-adhesive labels to cover existing packaging materials.

VI. *It is further ordered* that Intermatic distribute a copy of this order to each of its customers to which it has shipped five or more water heater timers at any time since January 1, 1977.

VII. *It is further ordered* that Intermatic continue its present policy of refunding the purchase price and installation cost for the Intermatic water heater timer.

VIII. *It is further ordered* that Intermatic prepare a point-of-sale display, in a form to be approved by authorized representatives of the FTC, which clearly and conspicuously (1) refers to the Intermatic "Little Gray Box" water heater timer; (2) contains the affirmative disclosures in paragraph II above; and (3) contains a statement of the refund policy required by paragraph VII above. Intermatic shall provide copies of the display, directly or through its distributors, to all retail stores which have sold the Intermatic water heater timer at any time since January 1, 1977, and request that the stores post the display for at least 30 days.

IX. *It is further ordered* that respondent maintain complete business records relative to the manner and form of its compliance with this Order. Respondent shall retain each record for at least three years, and shall retain substantiation and other documentation at least two years beyond the last dissemination of any representation contingent thereon under the provisions of this Order. Upon reasonable notice, respondent shall make any and all the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

X. *It is further ordered* that respondent forthwith deliver a copy of this Order to each operating division and affiliated business, to all present and future franchisees and licensees, and to all employees or agents now or hereafter engaged in the sale or offering for sale of respondent's products or in any aspect of the preparation, creation or placing of advertising on behalf of respondent; and that respondent secure from each such person a signed statement acknowledging receipt of this Order. In the case of persons or entities not involved with respondent's water heater timers, this paragraph shall be satisfied by delivery of a statement including, verbatim, the Order preamble and Paragraph I.C., above.

XI. *It is further ordered* that respondent notify the Commission at least thirty days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in said corporations which may affect compliance obligations arising out of the Order.

XII. *It is further ordered* that respondent shall, within sixty days after service upon it of this Order, file with the Commission a report setting forth in detail the manner and form in which it has compiled with this Order.

INTERMATIC INC.; (FILE NO. 782 3000)

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Intermatic Incorporated.

The agreement and order have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Intermatic Incorporated is a Delaware corporation which manufactures, sells and distributes a variety of electric appliances (primarily electrical timing and switching devices) for home and business usage. The complaint alleges that Intermatic disseminates promotional material for the Intermatic "little gray box" water heater timer which violates Section 5 of the Federal Trade Commission Act in several respects. First, Intermatic represents that its water heater timer will save the consumer money by eliminating previously wasted energy rather than by simply reducing the temperature and quantity of hot water available. Second, Intermatic misrepresents the amount of time during which the water heater must remain "on" in order to provide adequate hot water for the average consumer, and fails to disclose that use of the timer will require a change in life style, especially that some household appliances such as the dishwasher will only function properly during certain periods of the timer's cycle. Finally, widespread use of the water heater timer in the manner suggested by Intermatic could cause significant problems for local utilities. The Intermatic timer used as Intermatic suggests operates not so much to conserve energy as to defer consumption of electricity previously consumed during the off-peak hours to periods of high electricity demand, i.e., morning and early evening.

The proposed consent order deals with each of these problems. First, the allegedly deceptive claims are prohibited. Second, future ads, labels and instructions must contain certain information necessary for consumers to understand how the timer functions. For example, Intermatic is required to disclose in its advertising and packaging materials that the timer functions by reducing the quantity and temperature of hot water available and that dishwashers must be used during certain periods of the timer's cycle in order to operate properly. Intermatic is required to include in the instructions for use and installation of the timer, enclosed with each timer sold, that use of the timer as suggested could create peak load demand problems for the local utility. Finally, Intermatic's existing policy of refund to any dissatisfied customer was considered sufficient protection for previous customers who might have been misled by Intermatic's promotional materials. The order requires Intermatic to continue to honor its refund policy.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-4749 Filed 2-12-79; 8:45 am]

[6750-01-M]

[16 CFR Part 13]

[File No. 792 3035]

RENAULT U.S.A., INC.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require an Englewood Cliffs, N.J. seller and distributor of automobiles to cease limiting the duration of implied warranties; make available to purchasers who had been issued incorrect written limited warranties all relief provided by applicable state law, and refrain from raising any defense relating to the limitation of implied warranties in law suits brought by such purchasers. Additionally, the firm would be required to notify all purchasers who had received incorrect written limited warranties that they have an implied warranty on the drive train of their vehicle for as long as four years, depending on state law; and furnish them with an explanation of how implied warranties protect consumers. The firm would also be required to advise their dealers of their servicing obligations to purchasers who had been issued improper written limited warranties.

DATE: Comments must be received on or before April 14, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

FTC/PS, Michael E. K. Mpras, Washington, D.C. 20580. (202) 523-1642.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted

by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the matter of Renault U.S.A., Inc., a corporation, File No. Agreement Containing Consent order To Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Renault U.S.A., Inc., a corporation, and it now appearing that said corporation, hereinater sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

IT IS HEREBY AGREED by and between Renault U.S.A., Inc., a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 100 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with related materials pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding. The Commission may, at any time pending issue of this order, require hearings on the relief requirements provided by this order.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission, pursuant to the provisions of section 2.34 of the Commission's Rule, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I. DEFINITIONS

For the purposes of this Order the definitions of (1) the terms "written warranty" and "consumer product" as defined in section 101 of the Warranty Act shall apply, and (2) "incorrect limitation" shall mean the attempted limitation of the duration of the implied warranties on the internal engine, internal transmission (manual or automatic) and internal differential parts to 12,000 miles or 12 months, whichever comes first, as set forth in Paragraph Five of the complaint.

II.

IT IS ORDERED that respondent Renault U.S.A., Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly, through any corporation, subsidiary, division or any other device in connection with the advertising, offering for sale and sale of motor vehicles shall do the following:

A. Shall not limit the duration of the implied warranties with respect to any motor vehicle or part of such vehicle for a period which is shorter than the period of the express written warranty applicable to such motor vehicle or part.

B. For the period allowed by applicable state law:

1. Shall not raise any defenses pertaining to the limitation or modification of implied warranties as they relate to the internal engine, internal transmission and internal differential parts, in any case, suit or other proceeding brought against respondent by consumers who have purchased any of respondent's warranted motor vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation.

2. Provide, in good faith, all consumers who have purchased any of respondent's warranted motor vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation and which motor vehicles do not comply with all of the implied warranties as they relate to the internal engine, internal transmission and internal differential parts, with all relief available to them by applicable state laws.

C. Notify all consumers who have purchased any of respondent's warranted motor vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation, by mailing to each such consumer the notice set forth in Appendix A of this complaint and order. In order to comply with this paragraph, respondent must ascertain who are registered under state law as the owners of such vehicles, and whose names and addresses are reasonably ascertainable through such state records by a commercial locator engaged by respondent.

D. Notify, by letter, all of its authorized Renault dealerships that respondent may be liable to all Renault owners who purchased Renault vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation for breach of the implied warranties, including the implied warranty of merchantability and the implied warranty of fitness for a particular purpose for the period of time allowed by applicable state law. This notice shall, also, instruct the dealerships as to their servicing obligations, procedure for warranty claims by affected Renault owners and compensation of dealerships by respondent for work done pursuant to respondent's amended warranties and service manuals, and this order.

E. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any change in the corporation which may affect compliance obligations arising out of the order.

F. Deliver instructions, pursuant to this order, or a copy of this order, to all present and future personnel, agents and representatives of respondent, located in national or regional distribution offices, who review and approve warranty claims, and provide technical assistance regarding warranty claims, service and performance.

G. Maintain, for a period of three (3) years from the effective date of the order, complete business records of the manner and form of respondent's continuing compliance with all the terms and provisions of this order, to be furnished, upon request to the staff of the Federal Trade Commission during normal business hours and upon reasonable advance notice.

H. Shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A

DEAR RENAULT OWNER: Following a review of our written Limited Warranty by the Federal Trade Commission, it was pointed out to us that we had made an error in part of our written Limited Warranty. We have voluntarily agreed with the FTC to write you this letter as part of a way to correct that error. [FTC Docket No. —— and date of order]

When you bought your Renault car you also received a copy of our Limited Warranty. That warranty was for 12 months or 12,000 miles from the date of delivery or first use, whichever comes first, with addi-

tional coverage for 24 months or 24,000 miles on the drive train (which covers internal engine, internal transmission and internal differential parts). Included in that warranty, found in your warranty and maintenance guide, is a paragraph labeled "Implied Warranties Limitation" in which we incorrectly limited your implied warranties to 12 months or 12,000 miles on the drive train.

The Federal Warranty Law, the Magnuson-Moss Warranty Act, does not allow the implied warranties to run for a period shorter than the express written limited warranty. Because of our error, you now have implied warranties on the drive train of you car for as long as four years, depending on what your state law provides.

Implied warranties are rights created by state law, not by Renault or any other company. All states have them and they are in addition to the protection you get from written warranties (like our Limited Warranty). The most common implied warranty is the warranty of merchantability. This means that we promise that the car you bought is fit for the ordinary uses of the car, which include safe, efficient driving.

Another implied warranty is the warranty of fitness for a particular purpose. If you bought your car relying on our advice or statements in our advertisements that it can be used for a special purpose, then this advice may create a warranty.

The above discussion refers only to *implied warranties. Renault reminds you that in no event is your written warranty on the drive train extended beyond 24 months or 24,000 miles.*

If you feel that your car has a defect that is covered by either of these implied warranties, please contact your dealer, or call us at (telephone number) (this is a toll-free number for you).

If you have sold your car, please tell the new owner about this, or tell us and we will write to him/her.

Sincerely,

RENAULT U.S.A., INC.,
Customer Relations Department.

RENAULT U.S.A., INC., FILE No. DH8 0069

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Renault U.S.A. Inc., a corporation, with its principal place of business in Englewood Cliffs, New Jersey.

The proposed consent order has been placed on the public record for sixty (60) days for the receipt of comments by interested persons. Comments received during this period will become a part of the public record. After sixty (60) days, the Commission will again review the consent order and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Renault distributes and sells automobiles to the general public. In connection with the distribution and sale of its automobiles, Renault offers a written limited warranty on the drive train of its vehicles for 24 months or 24,000 miles, whichever comes first.

The proposed complaint also alleges that Renault has violated Section 108(b) of the Magnuson-Moss Warranty Act and Section 5 of the Federal Trade Commission Act by incorrectly attempting to limit the implied warranties on the drive train of its vehicles to 12 months or 12,000 miles, whichever comes first.

Implied warranties are created by state law, not by Renault. All states have them, and they are in addition to the protection consumers receive from written warranties. They give consumers protection that promises a car will be fit for ordinary use, and, under certain circumstances, that a car purchased for a specific purpose will be useful for that purpose. Under Federal warranty law, warrantors cannot limit implied warranties to a period shorter than the written "limited" warranty.

The agreement to the proposed consent order requires Renault to:

(1) Cease and desist from the prohibited practice.

(2) Make available to all purchasers all relief available to them under applicable state law, and refrain from raising any defense relating to the limitation of implied warranties on the drive train.

(3) Notify all purchasers: (a) that they have implied warranties on the drive train of their vehicles for as long as 4 years, depending on state law; and (b) an explanation of implied warranties, and how they protect consumers.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way the terms of the proposed order.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-4748 Filed 2-12-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 182, 186]

[Docket No. 78N-0111]

SULFAMIC ACID

Affirmation of GRAS Status as an Indirect Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to affirm the generally recognized as safe (GRAS) status of sulfamic acid as an indirect human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review being conducted by the agency. The proposal would list the ingredient as an indirect food substance affirmed as GRAS.

DATES: Written comments by April 13, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of direct and indirect human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposals (see the FEDERAL REGISTER of July 26, 1973 (38 FR 20040)) initiating this review. The safety of sulfamic acid has been evaluated under this review. In accordance with the provisions of § 170.35 (21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of this ingredient.

Sulfamic acid (NH_2SO_3H, CAS Reg. No. 5329-14-6), the monoamide of sulfuric acid, is a white crystalline solid. Sulfamic acid is not found in nature. It is prepared commercially from urea, sulfur trioxide, and sulfuric acid. It is soluble in water and is highly ionized, the pH of a 1-percent solution being 1.18. Sulfamic acid is listed in § 182.90 (21 CFR 182.90) as GRAS for use in paper and paperboard food-packaging materials, under a regulation published in the FEDERAL REGISTER of June 17, 1961 (26 FR 5421).

The approximate amounts of sulfuric acid imported in recent years, in milions of pounds, were reported to be 9.2 in 1970, 5.4 in 1971, and 5.2 in 1972. No comparable data are available for sulfamic acid production in the United States. Additionally, there is no information available concerning the amount of sulfamic acid used annually in food-packaging materials. It is known, however, that sulfuric acid is widely used for industrial purposes, such as acid cleaning, electroplating, bleaching, corrosion inhibiting, etc., and the ammonium salt of sulfuric acid is used for agricultural purposes as a herbicide. After reviewing available food-packaging data, the Select Committee on GRAS Substances has expressed the opinion that the amount of sulfamic acid entering the human food supply as a migrant from food-packaging materials is minute.

Sulfuric acid has been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose re-

sponse, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 71 abstracts on sulfuric acid was reviewed, and 35 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (hereinafter referred to as the Select Committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Two of a group of ten rats given oral doses of a 4 percent solution of sulfamic acid at levels of 1.6 g sulfamic acid per kilogram of body weight died in 12 to 20 hours; in similar tests eight of a group of eight rats survived without toxic signs as much as 1.6 g per kilogram of orally administered ammonium sulfamate given in a 4 percent solution. It has been noted that Spencer indicated the oral LD_{50} of sulfamic acid in rats to be 1.6 mg per kg. The author believes that this figure is in error and that it should have been 1.6 g per kg. The acute oral LD_{50} of ammonium sulfamate in rats is reported as 3.9 g per kg and 1.6 g to 4.4 g per kg.

Based on a rating of sulfamic acid and its salts as moderately toxic substances, the lethal oral dose of sulfamic acid in man is probably between 0.5 and 5.0 g per kg body weight and may be as much as 5 to 15 g per kg body weight for technical grade ammonium sulfamate. The Environmental Protection Agency has established a tolerance of 5 ppm for ammonium sulfamate on apples and pears and has recently announced that ammonium sulfamate is one of the substances for which they are seeking additional toxicological data for purposes of re-registration of this herbicide.

Sulfamic acid or ammonium sulfamate in the diet of rats for 15 weeks retarded growth at the 2 percent level but not at 1 percent (estimated intakes varied between 0.5 and 1.0 g per kg per day for the 1 percent level and 1.5 and 2.5 g per kg per day for the 2 percent level). Neither substance was toxic to dogs in oral doses of 100 mg per kg daily over a period of 6 days. When fed to cattle at a concentration of one percent in silage, sulfamic acid induced severe diarrhea, but no effect was noted at 0.5 percent of the diet (doses estimated to be 150 mg per kg per day and 75 mg per kg per day, respectively). Sulfamic acid was irritating to human skin when applied as a 4 percent solution. The effect was probably due to the high acidity of the solution since ammonium sulfamate does not have the same effect. The dosages used in these studies and in the acute toxicity studies noted above far exceeded the possible levels of human ingestion that might result from the migration of sulfamic acid from paper and paperboard packaging materials.

Sulfamate ion from sulfamic acid or ammonium sulfamate fed orally to dogs (1 g daily for 6 days) gave no systemic toxic effects, was not metabolized, and was excreted unchanged in the urine. Sulfamic acid exerts moderate germicidal activity against gram-negative bacteria and less activity against gram-positive forms.

No long-term toxicity studies or studies of possible carcinogenicity, mutagenicity, or teratogenicity of sulfamic acid were available to the Select Committee.

All the available information pertaining to sulfamic acid has been carefully evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

It seems most unlikely that more than minute amounts of sulfamic acid might occasionally enter foods by migration or abrasion from packaging materials. The acute toxicity of sulfamic acid is relatively low; it does not appear to be metabolized but is excreted unchanged in the urine.

The Select Committee concludes that there is no evidence in the available information on sulfamic acid that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used in food-packaging materials as now practiced or as it might be expected to be used for such purpose in the future. The Federation of American Societies for Experimental Biology evaluated the data on both sulfamic acid and ammonium sulfate and concluded that sulfamic acid is GRAS. Based on his own evaluation of available information on sulfamic acid and ammonium sulfamate, the Commissioner concurs with this conclusion. The Environmental Protection Agency (EPA) has requested additional data on ammonium sulfamate for direct herbicide use on apples and pears as part of its re-registration program. However, EPA's concern about the direct application of ammonium sulfamate to fruit does not raise a substantial question about the GRAS status of sulfamic acid used in food-packaging materials because of the minute amounts of sulfamic acid expected to enter the food as a result of such use. The Commissioner therefore concludes that no change in the current GRAS status of sulfamic acid is justified.

Copies of the scientific literature review on sulfamic acid and the report of the Select Committee are available for review at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22151, as follows:

Title	Order No.	Price Code	Price*
Sulfamic acid (scientific literature review)	PB 228-552/AS	A 03	$4.50
Sulfamic acid (Select Committee report)	PB 262-664/AS	A 02	4.00

*Price subject to change.

This proposed action does not affect the present use of sulfamic acid for pet food or animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Parts 182 and 186 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.90 [Amended]

1. In Part 182, § 182.90 *Substances migrating to food from paper and paperboard products* is amended by deleting "Sulfamic acid" from the list of substances.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In Part 186, by adding new § 186.1093, to read as follows:

§ 186.1093 Sulfamic acid.

(a) Sulfamic acid (NH_2SO_3H, CAS Reg. No. 5329-14-6) is a white crystalline solid manufactured from urea, sulfur trioxide, and sulfuric acid. It is soluble and highly ionized in water.

(b) The ingredient meets the following specifications:

(1) *Assay.* Not less than 98 percent. Dissolve about 2 grams, accurately weighed, in 40 milliliters of water, add bromothymol blue T.S., and titrate with 1 *N* sodium hydroxide. Each milliliter of 1 *N* sodium hydroxide is equivalent to 97.09 milligrams of NH_2SO_3H.

(2) *Limits of impurities*—(i) *Heavy metals (as Pb).* Not more than 20 ppm (0.002 percent) (Food Chemical Codex (FCC), 2d Ed. (1972),[1] Method II).

(ii) *Residue on ignition.* Not more than 0.05 percent (FCC test).

(c) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(d) the ingredient is used at levels not to exceed good manufacturing practice in accordance with § 186.1(b)(1).

[1]Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20037.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of this ingredient in food under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a wavier of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisons, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before April 13, 1979 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: February 5, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on July 10, 1973 and is on file in the Federal Register Library.

[FR Doc. 79-4660 Filed 2-12-79; 8:45 am]

[4110-03-M]

[21 CFR PART 436]

[Docket No. 76N-0123]

ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS; GRAMICIDIN AND TYROTHRICIN POTENCY ASSAY

Proposed Addition of New Medium; Withdrawal

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commissioner of Food and Drugs is withdrawing a proposal to establish a new medium to be used in the potency assay of gramicidin and tyrothricin. The proposal is being withdrawn for further consideration.

EFFECTIVE DATE: February 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Joan M. Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of May 12, 1976 (41 FR 19348), the Commissioner proposed to amend §§ 436.102 and 436.103 (21 CFR 436.102 and 436.103) to establish a new medium to be used in the potency assay of gramicidin and tyrothricin.

Because of comments received and the length of time since the proposal was published, the Commissioner has decided to withdraw the proposal and reconsider the matter. If it is concluded that further action is required, a new proposal will be issued.

Therefore, the proposal published in the FEDERAL REGISTER of May 12, 1976 (41 FR 19348) is hereby withdrawn. This withdrawal is issued under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 5.1).

Dated: February 6, 1979.

MARY A. MCENIRY,
Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 79-4658 Filed 2-12-79; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 7]

[LR-165-76]

HOMEOWNERS ASSOCIATIONS

Proposed Rulemaking

Correction

In the third line of the third highlight (INCOME TAX) appearing on the cover page of the issue of Tuesday, January 9, 1979, the hearing request date of 4-9-79 for FR Doc. 79-699 which appeared at page 1985 is incorrect. For the convenience of the reader, the correct date and the highlight is being republished.

INCOME TAX

Treasury/IRS proposes regulation to determine whether an organization qualifies as a homeowners association; comments and hearing request by 3-12-79..... 1985

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1058-6]

STATE OF DELAWARE

Proposed Revision of Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The State of Delaware has submitted a proposed revision of the State Implementation Plan (SIP) consisting of: (1) Court of Chancery injunction for the Phoenix Steel Corporation's (Phoenix) plant located in Claymont, Delaware; (2) amendments to Delaware Regulations No. V, XIV, and XVII as they apply to emissions from electric arc furnaces; and (3) a newly adopted Regulation No. XXIII entitled "Standards of Performance for Steel Plants: Electric Arc Furnaces". The injunction replaces a one-year variance granted by the State on December 2, 1977, for charging and tapping operations of the electric arc furnaces at the Company's plant in Claymont, Delaware. The injunction requires Phoenix to comply on or before December 5, 1980 with regulations promulgated by Delaware's Department of Natural Resources and Environmental Control ("the Department") which apply to electric arc furnaces. Prior to achieving final compli-

ance, Phoenix Steel Corporation shall not exceed the emission rates identified in the dispersion-modeling analysis in support of the revision.

DATE: Comments must be submitted on or before April 16, 1979.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: Bernard E. Turlinski.

State of Delaware, Department of Natural Resources, Division of Environmental Control—Air Resources, P.O. Box 1401, Lockerman Street and Legislative Avenue, Dover, Delaware 19901, ATTN: Robert R. French.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted before April 16, 1979, will be considered and should be directed to:

Mr. Howard Heim, Chief, Air Programs Branch, Air & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: AH008DE.

FOR FURTHER INFORMATION CONTACT:

Bernard E. Turlinski, Regional Energy Coordinator (3AH13), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone number (215) 597-8176.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Natural Resources and Environmental Control applied to the Court of Chancery of the State of Delaware for a permanent injunction against Phoenix Steel Corporation concerning compliance with the applicable provisions of Regulation No. V, Section 4 (Particulate Emissions from Industrial Process Operations) and Regulation XIV, Section 2 (Visible Emissions) and was issued said injunction by the Court on January 5, 1977. The injunction provided 57 months for compliance. Those regulations were part of Delaware's Implementation Plan pursuant to section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

On June 1, 1977, Phoenix Steel Corporation requested a variance from the provisions of Regulation V, Section 4 and Regulation XIV, Section 2, of the Department's Regulations Governing the Control of Air Pollution with respect to particulate and visible emissions during charging and tapping operations of the electric arc furnaces at its plant in Claymont, Delaware. A public hearing on the variance request was held on September 20 and continued on September 26 and 27, 1977. By order of the Secretary, the Department of Natural Resources and Environmental Control granted Phoenix Steel Corporation a one-year variance from the provisions of Regulation XIV, Section 2 and denied the request for variance from Regulation V, Section 4.

On December 2, 1977, the Secretary submitted the visible emissions variance to the Environmental Protection Agency (EPA) for consideration as a revision of the Delaware SIP. On the same date the Department adopted amendments to Regulations No. V and XIV and a new Regulation No. XXIII "Standards of Performance for Steel Plants: Electric Arc Furnaces" and submitted the amendments and the new regulation to EPA as revisions of the SIP.

In parallel with the activities involving the above variance request, the parties to the original injunction also requested that the Court issue a superseding injunction reducing the time for compliance from the Order under the prior injunction. The amended injunction now requires compliance with the provisions of Regulation No. XXIII on or before December 5, 1980.

A public hearing was held on July 6, 1978, in accordance with 40 CFR Section 51.4, to consider the amended injunction as a revision to the Delaware SIP.

The amended injunction was adopted by the Department of Natural Resources and Environmental Control on September 26, 1978, and submitted to the EPA for approval on October 5, 1978. In the letter dated October 5, the Secretary requested that the one-year variance granted by the Department to Phoenix Steel Corporation and submitted as a revision to the SIP on December 2, 1977, be withdrawn in favor of the Court of Chancery amended injunction. The Secretary further requested that the EPA continue consideration of the amendments to Regulations No. V and XIV and the new Regulation No. XXIII.

In the succeeding paragraphs the key provisions of the revision are summarized.

A. Court of Chancery injunction—the purpose of the injunction is to resolve alleged violations by Phoenix of the provisions of Regulation V, Section 4 and Regulation XIV, Section 2, by requiring that Phoenix select and install air pollution abatement equipment according to the following schedule:

1. On or before April 5, 1978, Phoenix shall select the type of system to be used to control charging and tapping emissions from its electric arc furnaces. (Completed)

2. On or before April 15, 1978, Phoenix shall complete the design and general specifications for the system. (Completed)

3. On or before May 15, 1978, Phoenix shall place the order for equipment of the system applicable to the first phase of the design. (Completed)

4. On or before May 15, 1978, Phoenix shall transmit to the Secretary the date on which Phoenix will place the order for equipment of the system applicable to the second phase of the design. (Completed)

5. On or before November 5, 1980, Phoenix shall complete installation of the balance of the system.

6. On or before December 5, 1980, Phoenix shall operate the system in compliance with the Department's regulations applicable to electric arc furnaces.

7. Item 6 above also is subject to possible extension as stated in Paragraph 16 of the injunction which reads as follows:

"The dates for compliance by Phoenix set forth in this Order shall be extended in the event and to the extent that such compliance by Phoenix shall be prevented or delayed by strikes, force majeure, acts of God or other events beyond the control of Phoenix (when concurred in by the Department, provided such concurrence shall not be unreasonably withheld)."

B. The interim emission levels applicable to Phoenix Steel Corporation prior to achieving final compliance are as follows:

1. Charging and Tapping Operations=3 lbs of particulate matter/ton of steel produced.

2. Electric Arc Furnaces (baghouse)=.05 lbs of particulate matter/ton of steel produced.

3. Argon Lancing=0.2 lbs of particulate matter/ton of steel produced.

4. Production Rate=70 tons of steel/hour.

C. Regulations No. V, & XIV and Regulation No. XVII (Source Monitoring, Record Keeping and Reporting).—The proposed revision exempts from compliance with these provisions, electric arc furnaces, and their associated dust-handling equipment, with a capacity of more than 100 tons.

D. Regulation No. XXIII.—This is a new regulation created expressly for electric arc furnaces with a capacity of over 100 tons. The regulation establishes emission rates for particulate matter, opacity limits during charging and tapping operations, monitoring operations, and describes test methods and procedures.

It is the tentative decision of the Administrator to approve the proposed revision of the Delaware State Implementation Plan.

The public is invited to submit, to the address stated above, comments on

whether the Court of Chancery injunction and the regulation amendments should be approved as a revision of the Delaware State Implementation Plan.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the revision meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

(Authority: 42 U.S.C. 7401)

Dated: January 29, 1979.

JACK J. SCHRAMM,
Regional Administrator.

[FR Doc. 79-4649 Filed 2-12-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1058-4]

DELAYED COMPLIANCE ORDERS

Administrative Order Issued By the Puget Sound Air Pollution Control Agency to Lone Star Industries, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Puget Sound Air Pollution Control Agency (PSAPCA) to Lone Star Industries, Inc. The order requires the company to bring air emissions from its cement plant in Seattle, Washington into compliance with certain regulations contained in the federally approved Washington State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before March 15, 1979.

ADDRESSEES: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth D. Brooks, Environmental Protection Agency, M/S 513, 1200 Sixth Avenue, Seattle, Washington 98101, telephone (206) 442-1387.

SUPPLEMENTARY INFORMATION: Lone Star Industries, Inc. operates a cement plant at Seattle, Washington. The order under consideration addresses emissions from the clinker storage at the facility, which are subject to section 9.15 of Regulation I of the Puget Sound Air Pollution Control Agency. The regulations limit the emissions of particulate matter and is part of the federally approved Washington State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979 through expansion and enclosure of the clinker storage building. The source has consented to the terms of the order and has satisfied the first increment contained in the order.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA proposes to approve the order because it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the sources for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Washington SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

DONALD P. DUBOIS,
Regional Administrator,
Region 10.

FEBRUARY 1, 1979.

In the matter of: Lone Star Industries, Inc., Seattle, Washington.

[Variance Application No. 212]

WHEREAS, the Congress of the United States amended Section 113(d) of the Federal Clean Air Act by 42 U.S.C. 7401, etc., to procure the attainment of emission standards by noncomplying sources in the United States and the procedure outlined is for the local air pollution agencies to prepare a "Delayed Compliance Order" which would be reviewed and approved by the Department of Ecology and the Environmental Protection Agency, and

WHEREAS, Lone Star Industries, Inc., Seattle, Washington, operates a clinker storage facility that is presently in noncompliance with the emission standards and this Order is being issued pursuant to Section 113(d) of the Clean Air Act and RCW 70.94.141; .155; and .221 and Regulation I of the Puget Sound Air Pollution Control Agency, and

WHEREAS, this Order, pursuant to the Federal Clean Air Act and state law, contains a schedule for compliance, interim requirements and reporting requirements, and

WHEREAS, Puget Sound Air Pollution Control Agency has issued public notice of this Order and of a public hearing before the Board of Directors of the Agency to consider the Order, pursuant to Section 113(d) of the Federal Clean Air Act and the requirements of the Washington State Implementation Plan (WSIP), and

WHEREAS, the Board has considered the entire record and the statements made for and against the Compliance Order and the Board being fully advised in the premises; makes the following:

FINDINGS

I

On May 16, 1978, the U. S. Environmental Protection Agency issued a Notice of Violation pursuant to Section 113(a)(1) of the Clean Air Act, to Lone Star Industries, Inc., upon the finding that the clinker storage facility is in violation of Section 9.15 of Regulation I of the Puget Sound Air Pollution Control Agency, a part of the applicable WSIP, as defined in Section 110(d) of the Act.

II

The observations of violations of Section 9.15 of Regulation I were made by the air pollution inspectors employed by the Puget Sound Air Pollution Control Agency and said observations are of record and on file in the office of the Puget Sound Air Pollution Control Agency.

Based upon the above findings, the Board does hereby enter the following:

ORDER

It is hereby determined that the schedule for compliance is as expeditious as practicable and that the terms of this Order are in compliance with Section 113(d) of the Act and are in furtherance of the public health, safety and welfare of the inhabitants of the Puget Sound area. Therefore, it is hereby ordered:

1. That the Lone Star Industries, Inc., will comply with Puget Sound Air Pollution Control Agency Regulation I, Section 9.15 in accordance with the following schedule on or before the date specified therein:

a. Expansion and enclosure of the Clinker Storage Building.

(1) Submit Notice of Construction—12/29/78.

(2) Procurement (Bids)—2/28/79.

(3) Start Construction—3/1/79.

(4) Complete Construction—6/25/79.

(5) Source in Compliance—7/1/79.

b. Quarterly Progress Reports.

Due Date	Quarter Ending
(1) Apr. 16, 1979	Mar. 31, 1979
(2) June 30, 1979	June 30, 1979

2. That Lone Star Industries, Inc., shall comply with the following interim requirements:

a. That Lone Star Industries, Inc., shall take all precautions to minimize the emissions of clinker dust particulate matter from the subject's storage facility to the maximum degree practicable.

b. That Lone Star Industries, Inc., shall handle the clinker as carefully as possible during transfer of the material in the storage area to minimize clinker dust entrainment as much as practicable.

c. That Lone Star Industries, Inc., shall hold outside storage to a minimum.

These requirements are determined to be the best reasonable and practicable interim system of the emission control and necessary to assure compliance with the Puget Sound Air Pollution Control Agency Regulation I. Section 9.15 insofar as the Lone Star Industries, Inc., is able to comply during the period this order is in effect.

3. That Lone Star Industries, Inc., is not relieved by this Order from any requirements imposed by the Washington State Implementation Plan and/or the courts pursuant to RCW 70.94.710 and RCW 70.94.715, during any period of imminent and substantial endangerment to the health of persons.

4. That Lone Star Industries, Inc., shall comply with the following reporting requirements specified below:

a. Monitoring.

(1) No additional monitoring or record keeping shall be required as a part of this Order.

b. Reporting Requirements.

(1) No later than five (5) days after any date for achievement of an incremental or final compliance, specified in Section 1 of this Compliance Order, Lone Star Industries, Inc., shall notify the Agency in writing of its compliance or noncompliance (state reasons for noncompliance) with such requirement. If delay is anticipated in meeting any requirement of this Order, Lone Star Industries, Inc., shall immediately notify the Agency in writing of the anticipated delay and reason therefore. Notification to the Agency of any anticipated delay does not preclude the Agency from taking enforcement action.

(2) All submittals and reports pursuant to this Order shall be made to: Mr. A. R. Dammkoehler, Air Pollution Control Officer, Puget Sound Air Pollution Control Agency, 410 West Harrison Street, P.O. Box 9863, Seattle, WA 98109, Area Code: (206) 344-7330.

5. That nothing in this Order is to be construed in any way as to prevent enforcement and/or abatement action for any violation of any applicable law, rule or regulation of any other governmental agency.

6. That Lone Star Industries, Inc. is hereby notified that its failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under Section 120 of the Clean Air Act. In the event of such failure, Lone Star Industries, Inc., will be formally notified by the U. S. Environmental Protection Agency or its delegate of its noncompliance pursuant to Section 120(b)(3) of the Act and to any applicable regulation promulgated thereunder.

7. That this Order shall be terminated by the Board of Directors, if it is determined on the record, after notice and hearing, that an inability to comply with PSAPCA Regulation I, Section 9.15 no longer exists.

8. That failure to comply with any condition and/or complete any specific action by its related date without prior written approval of the Agency, shall subject Lone Star Industries, Inc., to appropriate penalties and/or legal remedies as provided in RCW 70.94, for any violation of Regulation I; provided further that this Order does not prevent the Agency, during the term of the Order, from issuing to Lone Star Industries, Inc., Notice of Violation of any violation of Regulation I.

9. That this Order is issued by the PSAPCA Board of Directors effective January 11, 1979, pursuant to Puget Sound Air Pollution Control Agency Regulation I, Section 3.11 and RCW 7094.141; .155 and .221, which are part of the Washington State Implementation Plan.

PASSED AND APPROVED at a regular meeting of the Board of Directors of the Puget Sound Air Pollution Control Agency held this 11th day of January, 1979.

PUGET SOUND AIR POLLUTION CONTROL AGENCY.

GENE LOBE,
Chairman.

Attest:

ARTHUR R. DAMMKOEHLER,
Air Pollution Control Office.

Approved as to Form:

KEITH D. MCCOFFIN,
Agency Attorney.

[FR Doc. 79-4650 Filed 2-12-79; 8:45 am]

[6560-01-M]

[40 CFR Part 250]

[FRL 1054-3]

HAZARDOUS WASTE GUIDELINES AND REGULATIONS

Correction

AGENCY: United States Environmental Protection Agency ("EPA").

ACTION: Correction.

SUMMARY: The following corrections should be made in EPA's December 18, 1978, proposed regulations implementing Sections 3001, 3002, and 3004 of the Resource Conservation and Recovery Act of 1976 (RCRA), published at 43 FR 58946-59022, and its December 18, 1978, advance notice of proposed rulemaking under Section 3001 of RCRA, published at 43 FR 59022-59028:

FOR FURTHER INFORMATION CONTACT:

Hazardous Waste Management Division (WH-565), Office of Solid Waste, U.S. Environmental Protection Agency, Washington, D.C. 20460; Section 3001—Alan Corson, 202/755-9187, Section 3002—Harry Trask, 202/755-9187, Section 3003—Timothy Fields 202/755-9206.

CORRECTIONS

In FR Doc. 78-34904 and 78-34903, make the following changes:

Column and line	Correction
Page:	
58946 Col. 3—23	Change "202-755-9296" to "202-755-9206".
58948 Col. 1—4-5	Change "compiled over 400 case studies" to "information on over 400 cases".
58948 Col. 2—36	Insert after "hazardous": "waste".
58956 Col. 1—65	Change "(1)" to "(i)".
58956 Col. 2—69	Insert after "Nuclepore": "420800 142 mm filter holder (Nuclepore".
58956 Col. 3—4	Change "(5 ml)" to "<5ml)".
58956 Col. 3—12	Change "cm2" to "(cm^2".
58956 Col. 3—26	Delete "GLASS CENTRIFUGE BOTTLES".
58957 Col. 1—70	Change "250.13(b)(1)" to "250.13(d)(1)".
58958 Col. 2—20	Change "2319-2074" to "2319, 2874".
58958 Col. 2—25	Change "(Y,O)" to "(T,O)".
58959 Col. 1—15	Change "dithacarbamates" to "dithiocarbamates".
58959 Col. 1—16	Change "p-chlorobenzene" to "p-dichlorobenzene".
58964 Col. 3—64	Insert "be" after "reported to either".
58966 Col. 1—29-30	Change "explosure" to "exposure".
58966 Col. 3—73	Change "P 3.0" to "P>3.5".
58976 Col. 2—65	Change "an" to "and".
58977 Col. 1—29	Change "§ 250.2(c)" to "§ 250.22(c)".
58982 Col. 2—38	Change "activities" to "facilities".
58986 Col. 1—42	Change "§ 250.43-5" to "§ 250.45-5".
58987 Col. 1—22	Delete "closure and".
58988 Col. 2—31	Change "(§ 240.44)" to "(§ 250.44)".
Col. 3—71	Change "wate" to "waste".
58989 Col. 2—46	Change "10^{-1}" to "10^{-n}".
58991 Col. 3—33	Change "which" to "would".

Page:	Column and line	Correction
58992	Col. 2—10 of "Special Waste" table.	Change "~^{2}billion" to "~2 billion".
58994	Col. 2—46	Change "entirely" to "entirety".
58995	Col. 1—55	Change "and m" to "m, and n".
58995	Col. 3—72	Insert after "compliance": "with the permit conditions is not achieving or cannot achieve compliance".
59001	Col. 3—30	Change "250.45-1(b)(4)" to "250.45-1(d)(3)".
59002	Col. 3—13	Change "disposal or" to "disposal of".
59003	Col. 2—62	Change "iv" to "vi".
59004	Col. 2—31	Change "250.43-4(1)(4)" to "250.43-3(b)(6)".
59004	Col. 3—55	Change "(m)(1)(i)" to "(n)(1)".
59005	Col. 1—28	Delete "of".
59005	Col. 2—52	Change "2(b)(12)" to "2(b)13)".
59009	Col. 1—15 (excluding equation).	Change "(b)(1)" to "(d)(1)".
59010	Col. 2—43	Change "(iii)" to "(ii)".
59010	Col. 2—69	Change "(b)(17)" to "(b)(15)".
59011	Col. 2—13	Change "or" to "of".
59011	Col. 2—34-35	Delete second "and collect and analyze samples from these systems".
59013	Col. 2—65	Change "landfill" to "landfarm".
59015	Col. 1—4	Change "food" to "feed".
59015	Col. 1—48	Change "(b)(6-7)" to "(b)(6)".
59015	Col. 2—4	Change "(b)(6-7)" to "(b)(6)".
59015	Col. 2—39	Change "(b)(6-7)" to "(b)(6)".
59015	Col. 3—34	Change "(b)(6-7)" to "(b)(6)".
59016	Col. 2—8	Change "(b)(6-7)" to "(b)(6)".
59016	Col. 2—33	Change "(b)(6-7)" to "(b)(6)".
59015	Col. 1—52	Change "250.43-7(k), (l), and (m)" to "250.43-7 (l), (m), and (n)".
59015	Col. 2—8	Change "250.43-7(k), (l), and (m)" to "250.43-7 (l), (m), and (n)".
59015	Col. 2—43	Change "250.43-7(k), (l), and (m)" to "250.43-7 (l), (m), and (n)".
59015	Col. 3—38	Change "250.43-7(k), (l), and (m)" to "250.43-7 (l), (m), and (n)".
59016	Col. 2—12	Change "250.43-7(k), (l), and (m)" to "250.43-7 (l), (m), and (n)".
59016	Col. 2—37	Change "250.43-7(k), (l), and (m)" to "250.43-7 (l), (m), and (n)".
59015	Col. 1—70	Change "250.43(f)(h)" to "250.43(f)".
59015	Col. 2-23-25	Change "Overburden, slimes (phosphoric clays) and tailings from phosphate rock mining" to "Overburden and slimes (phosphatic clays) from phosphate rock mining".
59015	Col. 3—14, 17	Change "gram" to "liter".
59016	Col. 1—10, 13-16	Change "gram" to "liter".
59019	Col. 1—43	Change "AIRBONE" to "AIRBORNE".
59025	Col. 3—20	Change "P 3.5" to "P>3.5"

Dated: January 30, 1979.

THOMAS C. JORLING,
Assistant Administrator
for Water and Waste Management.

[FR Doc. 79-4629 Filed 2-12-79; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

NAVAJO INDIAN TRIBE IN ARIZONA, NEW MEXICO, AND UTAH

Feed Grain Donations

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Navajo Indian Tribe in Arizona, New Mexico, and Utah has been materially increased and become acute because of severe and prolonged rain and snow creating a serious shortage of livestock feeds. This reservation is designated for Indian use and is utilized by members of the Indian tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of this tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through March 14, 1979, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on February 2, 1979.

RAY FITZGERALD,
Administrator.

[FR Doc. 79-4692 Filed 2-12-79; 8:45 am]

[3410-15-M]

Rural Electrification Administration

COLORADO-UTE ELECTRIC ASSOCIATION, INC.

Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $439,100,000 to Colorado-Ute Electric Association, Inc., of Montrose, Colorado. These loan funds will be used to finance a project consisting of a 400 MW coal-fired generating unit and additional transmission substation facilities. Also, funds will be used to purchase a larger proportionate share of existing generation and transmission facilities of which Colorado-Ute now holds partial ownership.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. John J. Bugas, Manager, Colorado-Ute Electric Association, Inc., P.O. Box 1149, Montrose, Colorado 81401.

In order to be considered, proposals must be submitted (within 30 days from the date of this notice) to Mr. Bugas. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Colorado-Ute Electric and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 4th day of February 1979.

ROBERT W. FERAGEN,
Administrator, Rural Electrification Administration.

[FR Doc. 79-4626 Filed 2-12-79; 8:45 am]

[3410-15-M]

COOPERATIVE POWER ASSOCIATION & UNITED POWER ASSOCIATION

Informational Supplement to the Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared an Informational Supplement to the Final Environmental Impact Statement (FEIS) relating to the installation of two 450 MW steam generating units near Underwood, North Dakota, and associated ± kV dc transmission lines, and other related transmission facilities. These facilities are to be installed by Cooperative Power Association of Minneapolis, Minnesota, and United Power Association of Elk River, Minnesota. The Informational Supplement to the Final Environmental Impact Statement discusses certain modifications to routing of the Dickinson-Wilmarth (originally Dean Lake to Mankato) 345 kV ac transmission line as originally proposed in the FEIS. These modifications were prescribed by the Minnesota Environmental Quality Council.

This information supplements the material presented in the Final Environmental Impact Statement which was made available to the Council on Environmental Quality and the public on August 6, 1974. Supplements to the Final Environmental Impact Statement were made available to the Council on Environmental Quality and the public on January 4, 1977, and March 18, 1977.

Additional information may be secured on request, submitted to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., or at the borrowers' addresses indicated above.

Final REA action with respect to this matter (including any release of construction funds for the Dickinson-Wilmarth 345 kV transmission line) may be taken after thirty (30) days and after all requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 5th day of February 1979.

ROBERT W. FERAGEN,
Administrator, Rural Electrification Administration.

[FR Doc. 79-4625 Filed 2-12-79; 8:45 am]

[3410-30-M]

Office of the Secretary

NATIONAL ADVISORY COUNCIL ON CHILD NUTRITION

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that the National Advisory Council on Child Nutrition, established by Section 15 of the National School Lunch Act to make a continuing study of the child nutrition programs of the U.S. Department of Agriculture, has scheduled a meeting on March 8 and 9, 1979, from 9 a.m. to 5 p.m. daily, in room 645, GHI Building, 500 12th Street SW., Washington, D.C. 20250. The final agenda for the meeting, which will include individual work sessions concerning current issues related to the National School Lunch, School Breakfast, Special Milk, Child Care Food, and Summer Food Service Programs, will be available 15 days prior to the meeting. While direct participation will be limited to Council members, the meeting will be open to the general public for observation. Comments on this notice should be addressed to the Executive Secretary, Mr. Gene P. Dickey, U.S. Department of Agriculture, FNS, 500 12th Street SW., Washington, D.C. 20250 (202) 447-5548. A copy of the agenda and additional information may also be obtained from the Executive Secretary.

Dated: February 8, 1979.

CAROL TUCKER FOREMAN,
Assistant Secretary and Chairperson, National Advisory Council on Child Nutrition.

[FR Doc. 79-4772 Filed 2-12-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order No. 79-2-45, Docket No. 33346]

NORTHWEST AIRLINES, INC. ET AL.

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of February 1979. Application of Northwest Airlines, Inc. for amendment of its certificate for Route 3 to make authority at Jamestown, North Dakota, permissive. Docket 33346. Application and Notice of Intent of Northwest Airlines, Inc. to suspend at Jamestown, North Dakota. Docket 33347. Petition of Jamestown, North Dakota under sections 419(a)(2) and (10) of the Federal Aviation Act, as amended. Docket 33346 and 33347. Emergency Petition of Jamestown, North Dakota under section 419(a)(10) of the Federal Aviation act, as amended, for provision of essential air service. Docket 34316.

The Board has received a number of pleadings related to air service at Jamestown, North Dakota. Northwest Airlines now provides the only certificated service at the point. On September 1, 1978, Northwest filed applications seeking: (1) to make its certificate authority to serve Jamestown permissive by show-cause procedures (Docket 33346) and (2) to suspend service at the point pending final action on its certificate amendment request (Docket 33347). On November 13, 1978, Northwest filed a notice of intent to suspend service at Jamestown and asked that its notice relate back to September 1, 1978, when it originally applied for suspension authority. This last pleading was filed in response to section 19 of the Airline Deregulation Act of 1978, P.L. 95-504, enacted October 24, 1978. This provision amended section 401(j) of the Federal Aviation Act, as amended, in its entirety, and substantially altered the rights and obligations of certificated carriers, communities, and the government in matters involving the suspension of air service.

The Northwest filings have generated a number of responsive pleadings, certain of which are repetitive and have not been discussed in the text of the order. Summaries of them are included as Appendix A. We have considered all pleadings in reaching our decision, even those which seek relief under sections of the statute which have been struck from the Act. However, our decision is based upon the new law, especially sections 401(j) and 419.

The State of North Dakota [1] and the community opposed Northwest's original requests for a certificate amendment and a temporary suspension and asked for dismissal, or alternatively, an evidentiary hearing on these applications. Northwest filed a consolidated reply to these answers.

The North Dakota Aeronautics Commission filed an answer to Northwest's notice of intent and complained that the carrier's five-day-a-week service pattern at Jamestown was a reduction without the required notice (see Appendix B). The Commission asked the Board to deny Northwest's request to have its notice back-dated to September 1 and to order the carrier to provide Jamestown with one round trip daily, seven days a week, or two round trips, five days per week. On December 22, 1978, Jamestown [2] filed an emergency petition in Docket 34316 asking that the Board act expeditiously and order Northwest to begin providing service to Jamestown at the level guaranteed by section 419 of the Act (*i.e.*, one daily round trip) pending a final determination of essential air transportation for Jamestown and the replacement of Northwest by a willing carrier. Both civic parties maintained that the five-flights-a-week pattern than provided by Northwest at Jamestown violated both sections 401 and 419 of the Act by providing service substantially less than the minimum lawful level and that its eastbound flight was scheduled too late to provide access to the air transportation system. Northwest answered stating that as of January 11, 1979, Jamestown would receive service seven days a week and that it had rescheduled flight 62 to arrive at Jamestown from the west about mid-afternoon going beyond to Fargo and Minneapolis arriving in time to take advantage of early-evening connecting flights.

Jamestown later filed a separate petition under section 419(a)(10) asking the Board to establish essential air transportation at one of the following levels and to deny Northwest's certificate amendment application for permissive authority to serve Jamestown.

	Number of daily round trips [3]	
	Bismarck	Minneapolis
Jet Equipment:		
Alternative No. 1 (nonstop)	1	1
Alternative No. 2 (nonstop)	2	2
Commuter Equipment, Pressurized, 18-seat aircraft:		
Alternative No. 3 (nonstop)	2	3
Alternative No. 4 (nonstop)	2	4

[3] The civic parties have stated that weekend reductions is service would be all right. Jamestown also asks that, if replacement service were provided by a commuter air carrier, that it meet further stipulations (see Appendix A, 3).

Jamestown maintains that the level of essential air transportation must be set to accommodate at least 32,596

[1] Governor Arthur A. Link, the Governor's Commission of Commercial Air Transportation and the North Dakota Aeronautics Commission.

[2] The city of Jamestown, North Dakota, Stutsman County, North Dakota, Jamestown Chamber of Commerce and the Jamestown Municipal Airport Authority.

passengers a year and tie into connecting banks at both hubs. Northwest responded stating that the city's jet proposals would be prohibitively costly if they were required on Northwest; that the public would be better served by a smaller carrier, and that Northwest would not object to the deletion of Jamestown from its certificate.[4]

DISPOSITION

We are very concerned about the air service needs of Jamestown and we are prepared to take steps to see that its service needs are adequately met. We have determined, on an interim basis, the essential air transportation needs of Jamestown at a level we are confident will accommodate the traffic likely to be generated at Jamestown in the near future and will insure reasonably convenient access to the air transportation system. We will defer the petition of Jamestown for a final determination of the necessary level of essential air transportation.[5] We invite all carriers interested in providing essential air transportation at Jamestown to file applications by February 27, 1979. Our interim determination is just that. We are not precluded from later finding that the city's essential air transportation needs are different from those described in the interim findings which we make today.

We will dismiss without prejudice Jamestown's emergency petition in Docket 34316 requesting immediate provision of essential air transportation. On January 11, 1978, Northwest upgraded its service from a five-day-a-week pattern to a seven-day-a-week pattern and changed its eastbound service to a flight arriving at Jamestown from Billings in the early afternoon and continuing on to Minneapolis via Fargo (see Appendix B). We believe the new schedule pattern is comparable to the service Northwest provided in 1977 an gives the city better access than previously to connecting banks at various hubs. We expect Northwest to continue this schedule or a similar schedule until a replacement is in place. We will act as quickly as possible under the new statute to locate a replacement carrier to provide essential air transportation, and we will release Northwest as soon as we have done so. See section 419(a)(6).

We will dismiss as moot Northwest's initial suspension application in Docket 33347 since the Airline Deregulation Act amendments eliminate the requirement that carriers apply for authority to suspend service. Airline Deregulation Act of 1978, P.L. 95-504, section 19. We will also dismiss Northwest's application and motion for an order to show cause why its authority at Jamestown should not be made permissive. The new Act blurs the distinction between mandatory and permissive authority. *Iowa/Illinois-Atlanta Route Proceeding*, Order 78-12-35, December 7, 1978.

ESSENTIAL AIR TRANSPORTATION

Jamestown is a relatively small city[6] located equidistant (about 100 miles) from Bismarck on the west and Fargo on the east. It is 299 miles from Minneapolis. Northwest has served the point since 1934. During 1977, Northwest provided one daily round trip in the Jamestown-Bismarck/Minneapolis markets with the eastbound flight stopping at Fargo. Northwest was shut down by strike in mid-1978; it resumed service to Jamestown on November 15, 1978, with one Bismarck-Jamestown-Minneapolis round trip, five days per week. On January 11, 1979, Northwest improved the timing and the number of flights at Jamestown.

The city has petitioned that the Board find essential air transportation is daily nonstop, round-trip service to two hubs, Bismarck and Minneapolis, with either jet or 18-seat, pressurized aircraft. While we do not foreclose the possibility that service with jet or pressurized aircraft is essential for Jamestown, we have not made that finding now.

On an interim basis, we find that essential air transportation for Jamestown is at least two daily round trips in each direction between Jamestown, on the one hand, and Bismarck and Minneapolis, on the other, with aircraft having 15 seats or more. This service must be nonstop to Bismarck and either nonstop or one-stop to Minneapolis. The equipment used must be at least twin-engine aircraft meeting all Federal Aviation Administration requirements (with or without pressurization).[7] Whatever the equipment used, we expect the carrier providing the essential air transportation to offer well-timed and well-spaced service and additional capacity adequate for the amount of traffic generated. Finally, we will include a price element in our interim determination of essential air transportation to assure that local passenger fares not exceed the DPFI (*Domestic Passenger-Fare Investigation*) fares which Northwest could charge for travel between Jamestown and the above hubs.[8]

We believe that this level of service will provide Jamestown with reasonable access not only to its major community of interest, Minneapolis, but also to connecting opportunities both there and at a western hub. Further, it would allow an interested carrier with non-pressurized equipment to provide service with its present fleet and to graduate to larger equipment, if the demand appears to warrant such service. On the whole, we feel that the elevation of the terrain does not require pressurized equipment.

APPLICATIONS TO PROVIDE ESSENTIAL AIR TRANSPORTATION

We invite carriers interested in providing essential air transportation to Jamestown to file applications within 20 days from the date of adoption of this order (*i.e.*, February 27, 1979). Applicants willing to provide greater levels of service than our essential level are, of course, welcome, although subsidy will not be available for the extra service. Applications should include the following detailed information: (1) full service proposals—schedules, connecting opportunities, aircraft type and routings, and (2) fitness data—balance sheet, profit and loss statement, and proof of compliance with FAA rules and possession of necessary operating authority. Applicants willing to provide service *only* with compensation must also submit a detailed estimate of subsidy need based on representative costs and revenues.[9] [10]

Accordingly,

1. We defer the petition of Jamestown in Dockets 33346 and 33347 which requests that the Board determine the essential air transportation needs of the community;

---

[4] Northwest's answer was accompanied by a motion for leave to file a late document. We will grant the motion.

[5] We will make a final determination following our regional meetings and the establishment of regulations.

[6] Jamestown estimates that its population will reach 16,308 persons in 1980. See Jamestown's Petition to Establish Guaranteed Essential Air Transportation.

[7] Should no acceptable applications offering service with 15-seat aircraft be received, we will consider but not necessarily approve applications to provide service with aircraft having 14 or less seats. The number of frequencies to be provided must be greater to keep total capacity properly proportional.

[8] The *Airline Deregulation Act of 1978* amended section 1002 of the Federal Aviation Act to require that any joint-fare formula established by the Board be available to commuters. Effective January 22, 1979, the Board included commuter airlines under the uniform method of establishing and dividing joint fares for passengers traveling on two or more domestic airlines (Order 79-1-111). The joint fares will also be available in markets served only by commuters.

[9] If a carrier has historic operating data, it should base its estimate of subsidy need on actual costs and revenues.

[10] On January 26, 1979, Air Wisconsin filed a response to Jamestown's petition for essential air transportation indicating that, contemporaneously, it had filed a certificate amendment application and a petition for an order to show cause why it should not be granted authority to provide scheduled service between Jamestown, on the one hand, and Minneapolis and Bismarck, on the other (Docket 34584). It proposes three daily nonstop round trips in the Jamestown-Minneapolis market and two daily nonstop round trips in the Jamestown-Bismarck market, with 19-passenger Swearingen Metro aircraft beginning April 1, 1979.

2. We find that, at a minimum, the essential air transportation requirements of Jamestown, North Dakota, are as follows: nonstop service to and from Bismarck and nonstop or one-stop service to and from Minneapolis, at fares no higher than those which a trunkline carrier could charge under the DPFI formula, with twin-engine aircraft having 15 or more seats at a frequency level of two daily round trips to both Bismarck and Minneapolis;

3. We dismiss as moot Northwest's suspension application filed on September 1, 1978, in Docket 33347, and the emergency petition of Jamestown for a Board order requiring immediate provision of essential air transportation at Jamestown, in Docket 34316;

4. We request carriers interested in providing essential air service to Jamestown to file applications by February 27, 1979, including the data detailed on page 7 of this order;

5. We dismiss Northwest's certificate amendment application and motion for an order to show cause, in Docket 33346;

6. We order Northwest to continue to provide at least its current service level at Jamestown after February 11, 1979, for an additional 30 days;[11]

7. We grant Northwest's motion in Dockets 33346 and 33347 to file a late document; and

8. We shall serve this order on all persons listed in the service lists of Dockets 33346, 33347, and 34316, and all commuter air carriers registered with the Board from the following states: Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[12]

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX A.—SUMMARY OF PLEADINGS

DOCKETS 33346 AND 33347

On September 1, 1978, Northwest applied for an amendment to its certificate for Route 3 to make its authority to serve Jamestown N. Dak., permissive rather than mandatory (Docket 33346). It asked that its certificate amendment be accomplished by an order to show cause.

Contemporaneously, Northwest filed an application in Docket 33347 for suspension authority at Jamestown pending final Board decision on its application in Docket 33346. In support, the carrier claimed that it has attempted to serve and promote its Jamestown service, but its operations hae proven uneconomic resulting in a $1.1 million loss during the year ended March 31, 1978; that the point is better suited to subsidized local service or commuter operations; that alternative service is available to Jamestown passengers at Bismarck and Fargo—95 and 92 miles away via interstate highway; and that permitting Northwest to suspend and ultimately to convert its authority from mandatory to permissive comports with current Board policy.

On September 11, 1978, the State of North Dakota filed an answer opposing Northwest's suspension and certificate amendment applications and a motion calling for the dismissal of, or alternatively, a hearing on Northwest's applications. The State alleged that by its actions Northwest had in fact already suspended service at Jamestown in violation of its certificate; that Northwest had not exhausted its efforts to encourage and increase passenger boardings at Jamestown; and that, contrary to the carrier's statement, North Dakota does not believe Northwest is losing money by serving Jamestown. It also submits that the carrier's application does not meet the criteria for conversion from mandatory to permissive authority and the fact that Northwest is the only airline serving Jamestown, are ample justification for an evidentiary hearing.

Similarly on September 12, 1978, Jamestown[1] filed an answer opposing both the suspension and certificate amendment applications, asking for a dismissal of, or alternatively, a hearing on Northwest's applications and incorporating by reference the answer of the State of North Dakota. It also asked that the Board issue an order requiring Northwest to immediately restore air service to Jamestown, in accordance with its certificate and denying both Northwest's petition for an order to show cause and its suspension application. The civic parties maintain that passenger enplanements have fluctuated because of schedule changes not because of community growth and the way to stimulate traffic would be to implement a favorable schedule.

On September 18, 1978, Northwest filed a consolidated reply to the above answers. It submitted that the arguments advanced in opposition to its applications are either based on faulty assumptions or are legally unpersuasive in light of Board policies favoring permissive authority and free entry and exit in the marketplace. Northwest therefore requested that an order to show cause be issued and its suspension be granted.

On October 2, 1978, Jamestown filed a supplement number 1 to its answer in opposition correcting statements made about Jamestown's airport capability, and showing that a projection of potential passenger enplanements versus a projection of passenger enplanements assuming no service improvements from Northwest service existing before the strike (for example, 28,800 vs. 10,300 enplanements for 1983), and announcing that a new contract awarded Western Gear will result in 250 new jobs.

On November 13, 1978, Northwest filed a notice of intent to suspend service under new section 401(j) of the Act. The carrier further stated that it was not withdrawing its applications for temporary suspension or to make its authority at Jamestown permissive, that it would resume Jamestown service on November 15, and that its notice to suspend should relate back to September 1, when it filed its original suspension application.

On November 27, 1978, the North Dakota State Aeronautics Commission filed an answer to Northwest's notice to suspend and a complaint on the five-day-a-week service pattern Northwest had inaugurated at Jamestown asking the Board to deny Northwest's request to have its notice back-dated to September 1 and to order the carrier to provide Jamestown with seven-day-a-week service, either one round trip daily (the level of air service provided during 1977) or two round trips five days per week. In support the Commission maintained it is legally impossible to make Northwest's notice to suspend under the new act retroactive to September and that the reduction of service from a seven-day-a-week pattern offered in 1977 to a five-day-a-week pattern inaugurated at Jamestown after the strike violates both sections 401 and 419 of the Act by providing service substantially less than the minimum level.

On December 13, 1978, Northwest filed a letter giving 60 days notice to all cities which would lose nonstop or single-plane service if the Board allows it to suspend Jamestown service.

On December 29, 1978, Jamestown filed a petition asking the Board to establish essential air transportation at one of the following levels and to deny Northwest's application for permissive authority to serve Jamestown.

	Daily nonstop round trips	
	Bismarck	Minneapolis
Jet Equipment:		
Alternative No. 1	1	1
Alternative No. 2	2	2
18-seat, pressurized aircraft:		
Alternative No. 3	2	3
Alternative No. 4	2	4

Jamestown states that the level of essential air transportation must be set to accommodate at least 32,596 passengers a year and tie into connecting banks at both hubs. The city also maintains that Northwest's presence as a potential competitor will dissuade smaller carriers from serving Jamestown.

On January 4, 1979, at a meeting, the city passed out addenda to its petition to establish essential air transportation including correspondence from affected citizens and businesses. It also asked that: (1) the replacement carrier have interline ticketing and baggage handling agreements with all carriers serving Minneapolis and Bismarck and computerized reservations capability, (2) all schedules and tariffs are published in the OAG, and (3) local fares be compatible with the overall industry fares and joint fares be required with connecting air carriers. These addenda were later filed with the Board on January 18, 1979.

On January 11, 1979, Northwest filed an answer to Jamestown's petition. It states that the jet alternatives suggested by the community would be prohibitively costly for Northwest to provide; that Northwest takes no position on the legality of any attempt to require it to provide those service levels, at this time; and that the public would be better served by having service provided by a smaller carrier. The carrier also submitted

[11] We may continue to renew this mandate for additional 30-day periods until replacement service is supplied.

[12] All members concurred.

[1] The City of Jamestown, North Dakota, Stutsman County, North Dakota, Jamestown Chamber of Commerce and the Jamestown Municipal Airport Authority.

that it would not oppose the deletion of Jamestown from its certificate.

DOCKET 34316

On December 22, 1978, Jamestown filed an emergency petition asking the Board to act expeditiously and order Northwest to begin providing service at Jamestown at the level guaranteed by section 419 of the Act pending a final determination of essential air transportation for Jamestown and the replacement of Northwest by a willing carrier. Jamestown maintained that the minimum reasonable level of essential air transportation on an interim basis should consist of an eastbound morning flight and a westbound evening flight provided seven days a week. In support of its petition, Jamestown alleged that Northwest's five-day-a-week service pattern violated both sections 401 and 419 of the Act. The city further submitted that the eastbound service was unusable with an arrival in Minneapolis at 1:08 a.m. and no service on Wednesday and Thursday; that the westbound service failed to provide connecting service at Bismarck and was not operated on Tuesday and Wednesday; that when Northwest resumed service to Jamestown, it failed to have the Jamestown flights printed in the OAG or put as its own reservations computer; and that Northwest has refused to ship freight to Jamestown and, on at least one occasion, its eastbound flight overflew Jamestown even though it was a scheduled stop and there were Jamestown-destined passengers on board.

On January 4, 1979, Northwest filed an answer in opposition to Jamestown's emergency petition claiming its petition is now moot since Northwest would adjust its Jamestown schedules on January 11, 1979, to give Jamestown service seven days per week and good eastbound and westbound access to numerous single-plane and connecting opportunities. Specifically, Northwest's flight 62 would arrive at Jamestown at 2:49 p.m., depart at 2:59, and after a brief stop in Fargo arrive in Minneapolis at 4:35 p.m.

APPENDIX B.—*Calendar Year 1977 Service*

			Frequency
Eastbound service, 7 days per week:			
Leave Bismarck	7:00 a.m.	NW Flight 420	Daily
Arrive Jamestown	7:29 a.m.	NW Flight 420	Daily
Leave Jamestown	7:45 a.m.	NW Flight 420	Daily
Arrive Fargo	8:14 a.m.	NW Flight 420	Daily
Leave Fargo	8:40 a.m.	NW Flight 420	Daily
Arrive Minneapolis	9:25 a.m.	NW Flight 420	Daily
Westbound service, 7 days per week:			
Leave Minneapolis	12:35 p.m.	NW Flight 701	Daily
Arrive Jamestown (nonstop)	1:35 p.m.	NW Flight 701	Daily
Leave Jamestown	1:50 p.m.	NW Flight 701	Daily
Arrive Bismarck	2:20 p.m.	NW Flight 701	Daily

SERVICE BETWEEN NOV. 15, 1978 AND JAN. 11, 1979

Eastbound service, 5 days per week:			
Leave Bismarck	11:35 p.m.	NW Flight 40	Except Wed/Thurs
Arrive Jamestown	12:04 a.m.	NW Flight 40	Except Wed/Thurs
Leave Jamestown	12:15 a.m.	NW Flight 40	Except Wed/Thurs
Arrive Minneapolis	1:08 a.m.	NW Flight 40	Except Wed/Thurs
Westbound service, 5 days per week:			
Leave Minneapolis	6:45 p.m.	NW Flight 235	Except Tues/Wed
Arrive Jamestown	7:47 p.m.	NW Flight 235	Except Tues/Wed
Leave Jamestown	8:00 p.m.	NW Flight 235	Except Tues/Wed
Arrive Bismarck	8:30 p.m.	NW Flight 225	Except Tues/Wed

SERVICE SINCE JAN. 11, 1979

Eastbound service, 7 days per week:			
Leave Billings	12:40 p.m.	NW Flight 62	Daily
Arrive Jamestown	2:49 p.m.	NW Flight 62	Daily
Leave Jamestown	2:59 p.m.	NW Flight 62	Daily
Arrive Fargo	3:28 p.m.	NW Flight 62	Daily
Leave Fargo	3:50 p.m.	NW Flight 62	Daily
Arrive Minneapolis	4:35 p.m.	NW Flight 62	Daily

Westbound service, 7 days per week:
Same as service between November 15, 1978 and January 11, 1979, except service is operated daily.

[FR Doc. 79-4605 Filed 2-12-79; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Bluefish Factfinding Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Public Factfinding Meetings.

SUMMARY: The Mid-Atlantic Council is currently considering preparation of a fishery management plan for bluefish. The Council needs information from all participants in the fishery to determine if it should prepare such a plan and, if a plan is necessary, to help in preparing the plan.

The purpose of the factfinding meetings is to elicit information from the industry and public about this fishery. Reliable information on this fishery and scientific data on this species are in most cases very scarce. The Council would greatly appreciate any information on the operations of this fishery and industry from any member of the public, either through these meetings or mailed to the Council's office.

Any information which relates to an individual's or company's business operations that is identified as confidential will be held in the strictest confidence and will not be released except in aggregate form without individual identification.

DATES AND ADDRESSES: The Mid-Atlantic Fishery Management Council will hold its public hearings in accordance with the following schedule:

March 5—Cannon Building, University of Delaware, Lewes, Delaware, 7:30–10:30 P.M.

March 6—Holiday Inn, Route 25, Riverhead, New York 11901, 7:30–10:30 P.M.

March 7—Quality Inn Lake Wright, 6280 North Hampton Boulevard, Virginia Beach, Virginia, 7:00–10:00 P.M.

Hearings will be tape recorded and the tapes filed as an official formal transcript of proceedings. Summary minutes will be prepared on each hearing.

Written comments should be submitted to the contact person listed below by April 30, 1979, to receive full consideration in the plan development process.

FOR FURTHER INFORMATION CONTACT:

Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, North and New Streets, Dover, Delaware 19901. Telephone: 302-674-2331.

Dated: February 8, 1979.

WINFRED H. MEIBOHM,
Executive Director,
National Marine Fisheries Service.

[FR Doc. 79-4752 Filed 2-12-79; 8:45 am]

[3510-24-M]

Office of the Secretary

[Department Organization Order 45-1]

ECONOMIC DEVELOPMENT ADMINISTRATION

JANUARY 11, 1979.

This order effective January 11, 1979 supersedes the material appearing at 43 FR 3604 of January 28, 1978 and 43 FR 6127 of February 13, 1978.

Section 1. PURPOSE.

.01 This Order prescribes the organization and assignment of functions within the Economic Development Administration (EDA). Department Organization Order 10-4, "Assistant Secretary for Economic Development," prescribes the scope of authority of the Assistant Secretary for Economic Development and the functions of EDA.

.02 This revision reflects an extensive reorganization of EDA. The major changes include (1) the transfer of the Investigations and Inspections Staff to the Office of the Inspector General, (2) changes in the responsibilities and organization of the Deputy Assistant Secretary for Economic Development (Section 4.), (3) changes in the responsibilities and organization of the Deputy Assistant Secretary for Economic Development Policy and Planning (Section 5.), (4) changes in the responsibilities and organization of the Deputy Assistant Secretary for Economic Development Operations (Section 6.), (5) changing of the title of the former Office of Administration and Program Analysis to the Office of Management and Administration and prescribing the new organization and functions of that Office, (6) changes in the responsibilities and organization of the Regional Directors (paragraph 12.02), (7) incorporating the outstanding amendment, and changing gender indicative language in the Order.

Sec. 2. ORGANIZATION STRUCTURE.

The principal organization structure and line of authority of the Economic Development Administration shall be as depicted in the attached organization chart (Exhibit 1). A copy of the organization chart is on file with the original of this document on file in the Office of the Federal Register.

Sec. 3. OFFICE OF THE ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT.

.01 The *Assistant Secretary* directs the programs and is responsible for the conduct of all activities, including overall direction and coordination of the Regional offices of EDA, subject to the policies and directives prescribed by the Secretary of Commerce.

a. The *Office of Special Projects* shall serve as a principal staff office of the Assistant Secretary. The Office shall provide advice, direction and coordination for the development and implementation of selected innovative economic development programs and projects to assist selected urban areas, special areas such as the Mexican-American border and Puerto Rico, and special groups identified by the Assistant Secretary. In accomplishing these functions the Office shall develop necessary implementation plans, strategies, and procedures and coordinate, as appropriate, with other Federal, State, and local organizations. The Office shall be headed by a director who shall report and be responsible to the Assistant Secretary.

b. The *Executive Secretariat* reports to the Assistant Secretary and shall receive all correspondence addressed to the Office of the Assistant Secretary, and assign it to the appropriate office for action; record controlled and non-controlled correspondence, maintain prompt follow-up of replies to insure that deadlines are met, maintain correspondence and policy files; and provide a selective reference service to files as requested by EDA officials.

Sec. 4. OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT.

.01 The *Deputy Assistant Secretary* shall serve as Executive Secretary and provide or arrange for staff support, as required, for the National Public Advisory Committee on Regional Economic Development; represent the Administration on international organizations when so designated; establish uniform overview standards and procedures to be followed by the Regional Offices' Environmental Specialists in their review of projects under Sections 101 and 201 of the Public Works and Economic Development Act of 1965, as amended, (the "Act"); supervise the activities of the Indian Program Staff; assist the Assistant Secretary in all matters affecting EDA; and perform the duties of the Assistant Secretary during the latter's absence.

.02 The *Office of Operational Planning and Control* shall manage and coordinate the linkage between headquarters in Washington and the regional Offices. It shall oversee the implementation, administration, management, evolution and further development of the Operational Planning and Control System (OPCS). It shall also function as a central point of information and reference for substantive communication between EDA headquarters and the Regional Offices; and shall serve as an advocate and point of contact to identify the information and policy needs of the Regional Offices and shall coordinate headquarters initiatives which impose a significant burden on regional personnel and financial resources. The Office shall also manage and oversee the process for allocating funds to the Regional Offices.

.03 The *Indian Program Staff* shall administer the Indian economic development program and advise the Deputy Assistant Secretary concerning its general effectiveness. It shall recommend approval or denial of projects proposed for Indian areas except all projects under Sections 101 and 201 of the Act which do not require special action; and negotiate and monitor interagency agreements relating to Indian economic development. (Projects requiring special action are those which are called to Washington for purposes of monitoring, involve controversial aspects, or—for example—require an environmental impact statement which must be approved by the Special Assistant for Environmental Affairs.)

Sec. 5. DEPUTY ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT POLICY AND PLANNING.

.01 The Deputy Assistant Secretary for Economic Development Policy and Planning is the principal advisor to the Assistant Secretary on matters of overall EDA policy and program development, including the development, recommendation, and formulation of EDA policy, strategies, and program initiatives. In addition, the Deputy Assistant Secretary is responsible for the development and direction of an effective program of institutional capacity building to improve the ability of State and local governments and other subnational development agencies to plan and carry out economic development programs, and shall:

a. Define and formulate EDA policy and program development issues and direct the process of EDA policy review, coordination and evaluation.

b. Exercise responsibility for EDA's interagency and intergovernmental relations and its relations with those quasi-public and private agencies interested in economic development for districts and areas.

c. Conduct programs of research, program evaluation and demonstration and assure that their findings are integrated within EDA's policy and program development processes.

d. Exercise responsibility for EDA's institutional capacity building efforts and for all policies, procedures and criteria related to the development and approval of Overall Economic Development Programs (OEDPs), invest-

ment strategies and other planning documents.

e. Guide, train, monitor, and evaluate the Regional Offices in their management of EDA's capacity building and planning grant programs and their implementation of EDA's planning and investment strategy policies.

f. Direct the eligibility determination function of EDA and the data collection and analysis activity which supports this function.

g. Direct the conduct of studies related to industry and industrial sector needs, growth trends, problems, and other issues.

.02 The Deputy Assistant Secretary for Economic Development Policy and Planning shall direct and supervise the following organizational elements:

a. The *Office of Development Organizations and Planning* shall:

1. Have responsibility for policy and program development related to EDA's subnational economic development planning and capacity building programs under the Office of Development Organizations and Planning.

2. Manage and oversee the administration of all EDA institutional capacity building and planning grant programs for States, cities, Districts, counties, neighborhoods, metropolitan areas, and Indian tribes.

3. Oversee the implementation of policies and procedures for developing, processing, and monitoring planning grants to States, cities, Districts, counties, neighborhoods, metropolitan organizations, and Indian tribes, and provide appropriate guidance to the Regional Offices in carrying out these functions.

4. Develop policies, procedures, and allocation strategies for all EDA planning grant programs, including program guidelines, objectives and performance criteria for EDA's Operational Planning and Control System.

5. Provide assistance to the Regional Offices in linking EDA supported planning to the investment decision process of EDA and its State and local clientele.

6. Develop policies and procedures related to establishing and strengthening subnational economic development institutions and organizations.

7. Establish policies and criteria which must be followed by EDA grantees in developing their economic development planning processes and documents.

8. Provide guidelines concerning the need for specific skills in the planning function and provide advice, as requested, regarding the selection of Regional Offices' staff capabilities responsible for EDA planning and capacity building activities.

9. Provide guidance and necessary training for Regional Office personnel in the management of EDA's planning and institutional capacity building efforts.

10. Provide advice and guidance to the Regional Offices on problems encountered in interpreting and applying EDA policies related to institutional capacity building, planning, and OEDPs/investment strategies.

11. Advise the Regional Offices in the development of procedures to monitor and evaluate the planning activities and outputs of States, cities and towns, counties, Districts, neighborhoods, metropolitan organizations, and Indian tribes.

12. Monitor and evaluate the Regional Offices for their effective implementation of EDA policies related to institutional capacity building and the development of OEDP's, investment strategies and other economic development planning documents, including objectives established through EDA's Operational Planning and Control System.

13. Advise the Deputy Assistant Secretary for Economic Development Policy and Planning concerning approval of OEDP's, investment strategies, and other planning documents originating at the Regional Office level.

14. Exercise responsibility for activities related to interagency coordination of policies, programs, and requirements related to economic development planning.

b. The *Office of Policy, Evaluation and Research* shall:

1. Define EDA policy and program development issues and coordinate the formulation and preparation of such issues for consideration by the Assistant Secretary.

2. Exercise principal staff responsibility within EDA for policy development, review and evaluation.

3. Exercise principal responsibility for EDA's interagency policy development and intergovernmental coordination activities.

4. Conduct a program of internal and external research that is concerned with subnational economic development problems and opportunities, and that is designed to meet the needs of EDA and its clientele.

5. Review, evaluate, integrate and disseminate the results of EDA sponsored research as well as other research findings that are relevant to EDA objectives.

6. Conduct evaluations of EDA's policies, programs and projects to determine their effectiveness in terms of goals and objectives, and develop cost benefit studies to aid the Assistant Secretary in making choices and decisions between alternative programs, projects or activities for economic development.

7. Assist other EDA units in identifying program evaluation needs, designing evaluation studies, and making effective use of evaluation findings, including developing and implementing measures of resource utilization for programming and budgeting purposes.

8. Develop, direct and oversee a demonstration program designed to formulate, test, and evaluate innovative approaches to subnational economic development.

9. Assure that the findings and results of EDA's research, evaluation, policy analysis, and demonstration functions are integrated and effectively applied to EDA's policy decision-making process.

c. The *Office of Eligibility and Industry Studies* shall:

1. Assemble, analyze, evaluate and maintain statistical data on unemployment, income, migration, and other criteria for the purpose of determining eligibility of geographic areas and private businesses for assistance under the PWEDA of 1965 and the Trade Act of 1974.

2. Collect and analyze socio-economic data necessary for effective EDA program development and resource allocation, and provide general statistical support for EDA program management activity.

3. Conduct studies for the economic problems of industries and industrial sectors; analyze industrial growth trends and work force characteristics; and design and maintain an industrial location system which can match growth industry needs to destressed area resources.

4. Undertake all activities assigned to EDA that pertain to the certification of firms and communities under the Trade Act of 1974.

5. Obtain from other Federal agencies data and analytic support necessary to fulfill EDA's statutory eligibility determinations, data collection and analysis, industry studies, and import monitoring responsibilities.

Sec. 6. DEPUTY ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT OPERATIONS.

.01 The Deputy Assistant Secretary for Economic Development Operations shall:

a. Provide coordinated direction of all EDA activities related to financial and technical assistance projects which will improve local economies and for the integration of EDA's investment and planning activities.

b. Develop policies and procedures for the implementation of the following program authorities:

1. Public Works;

2. Technical Assistance;

3. Title IX Special Adjustment Assistance;

4. Title IX Long-Term Economic Deterioration;

5. Business Development;

6. Local Public Works; and

7. Section 304 State Grant Program.

c. Develop policies and procedures for the implementation of the Comprehensive Economic Development Strategies process to integrate various EDA program authorities.

d. Recommend standards, policies, and criteria for the technical evaluation and processing of project applications for assistance under the above program authorities.

e. Review and recommend when procedures require, approval or denial of project applications to the Assistant Secretary and approve amendments to existing grants, loans, and loan guarantees.

f. Evaluate activities of the Regional Offices in applying policies, standards, and procedures for processing project applications to assure efficient and effective accomplishment of approved projects.

.02 The Deputy Assistant Secretary for Economic Dvelopment Operations shall direct and supervise the activities of the following organizational elements:

a. *The Office of Public Investments* shall be responsible for the implementation of EDA's Public Works (Titles I, II and IV); Long-Term Economic Deterioration (Title IX); Revolving Loan Fund (Title IX); and Section 304 programs. The functions of the Office are to:

1. Develop policies and procedures for the implementation of above cited public investment programs.

2. Direct and oversee the specific program authorities to assure timely and uniform implementation nationwide.

3. Coordinate the public investment programs with other EDA programs as well as those of other agencies.

4. Oversee post-approval management of all public investments, including special adjustment assistance, construction and revolving loan projects.

5. Provide guidance and direction to the Regional Offices regarding implementation of the public investment programs.

6. Oversee and coordinate the Section 304 program for the Deputy Assistant Secretary for Economic Development Operations.

7. Develop, in coordination with the Office of the Inspector General, criteria for audits of the public investment programs, including adherence to EDA policy and programmatic requirements.

8. Provide special reports and briefing materials in the various public investment programs. Provide information to prospective applicants, Congressional offices, and public interest groups.

b. The *Office of Private Sector Investments* shall:

1. Direct, develop and recommend policies, standards, and procedures for administering the private sector investment programs as provided for by the Public Works and Economic Development Act of 1965, as amended, and the Trade Act of 1974.

2. Advise Regional Offices' personnel, Economic Development Representatives, members of the banking and industrial community, and the public of the uses of private sector financial assistance programs.

3. Direct the development and processing of special investment, national and prototype projects in conjunction with the development of OPCS standards and measurements.

4. Direct, coordinate and provide guidance and direction to the field to ensure uniform implementation of comprehensive economic development strategies and investment tracking systems.

5. When appropriate, review recommendations of the Regional Offices for the approval of applications for financial assistance consisting of direct loans and/or guarantees, and other forms of assistance as they are authorized, and advise the Deputy Assistant Secretary for Econcomic Development Operations on such recommendtions.

6. Monitor, coordinate and conduct training for the implementation by Regional Offices of policies, standards, and procedures related to processing applications for financial assistance to assure efficient, effective and economic accomplishment of the private sector investment programs.

7. Develop and implement EDA-approved agreements with other Federal agencies to obtain support for the private sector investment programs.

8. Monitor, coordinate and conduct training for the administration and servicing of EDA financial assistance to the private sector, including loans for projects approved under provisions of the Area Redevelopment Administration (ARA), and the Trade Act assistance program (TAA), and prepare reports of accomplishments.

9. Arrange for, or provide, needed specialized assistance to all recipients of financial assistance.

10. Conduct special servicing of distressed direct loans and guarantees transferred to the Office by the Regional Offices.

11. Develop policies, plans and procedures to improve or terminate projects in default of loan conditions.

12. Conduct, or arrange for, the orderly liquidation of defaulted loans.

13. Direct all activities relating to the care and preservation of collateral and security position in loans and guarantees.

14. Direct program promotion (outreach) efforts to generate knowledge and utilization of EDA's private sector financing programs.

c. The *Office of Technical Assistance* oversees and directs the technical assistance programs administered through the Regional Offices, and technical assistance for economic development capacity building, trade adjustment assistance and developmental investments using a variety of National organizations, University Centers, and other public and private agencies as appropriate, and shall:

1. Develop, recommend and implement uniform technical assistance policies, standards, and procedures for accepting, processing, reviewing, approving monitoring, and evaluating the operation of technical assistance projects of local and National scope consistent with the Act, its amendments, Office of Management and Budget Circulars, Federal Management Circulars, Executive Orders and appropriate laws.

2. Direct the administration of the Technical Assistance Program through all of its phases; coordinate all Technical Assistance activities with other EDA offices and programs.

3. Provide appropriate technical, program, and policy guidance to Regional Office personnel; oversee and monitor technical assistance activities in Washington and Regional Offices.

4. Provide training and development of technical assistance personnel in every facet of the program.

5. Maintain a central library of completed technical assistance reports; develop reports and information distribution system.

6. Maintain operating liaison with other Federal agencies where their programs affect economic development and which may supplement EDA projects.

d. The *Office of Special Adjustment Assistance* shall:

1. Direct and oversee the operation of the title IX economic dislocation program to assure timely and uniform implementation nationwide.

2. Develop policies and procedures for implementation of the program.

3. Coordinate EDA's economic adjustment assistance activities with other Federal Departments and Agencies, e.g., Department of Defense (Economic Adjustment Committee), HUD (FDAA), Coastal Zone Management.

4. Provide immediate technical assistance to an area when a dislocation occurs (assessment of the problem, possible solutions, etc.) and direct assistance to potential applicants in preparing proposals.

5. Review proposals and prepare recommendations to the Deputy Assistant Secretary for Economic Development Operations prior to authorization of formal applications.

6. Conduct final processing and review of projects.

7. Assist Regional Offices on individual projects, both during the application development phase and after project approval. Post approval assistance will include project oversight taking into account program and policy compliance and appropriate measures to correct noncompliance.

8. Evaluate program performance.

9. Ensure that sudden and severe economic dislocation (SSED) projects are coordinated with other Federal assistance to impacted areas.

10. Prepare special reports, briefings, briefing materials and other information for Congressional offices, prospective applicants, public interest groups, etc.

e. The *Office of Program Operations* shall:

1. Develop and oversee policy and procedure to assure that EDA's program tools are used in a coordinated and integrated manner in support of a place oriented approach to development.

2. Develop policy and procedures for preparation, review, acceptance and monitoring of local Investment Strategies that can serve as the basis for investment decisions by EDA and other public and private entities.

3. Work closely with all EDA program offices and other administrative offices as appropriate in development and implementation of policies and procedures which govern Office of Program Operations activity; and provide a liaison between these offices and the Deputy Assistant Secretary for Economic Development Operations on all other matters related to place oriented approaches to development.

4. Work with other Federal, State and regional agencies involved in local development activities in the development of policies and procedures which will facilitate the coordinated implementation of multi-agency investments at the local level; and carry on liaison between the organizations under the Deputy Assistant Secretary for Economic Development Operations in implementation of its program responsibilities, obtaining their support for local Investment Strategies and assuring their input into EDA policy development as appropriate.

5. Serve as liaison between Regional Office Directors and the Deputy Assistant Secretary for Economic Development Operations on matters related to the integrated use of EDA tools on a place oriented basis, including the review of Regional Investment Strategies; and provide guidance to the Reginal Directors in implementing policies and programs reflecting a place oriented approach to development.

6. Serve as liaison between the organizations under the Deputy Assistant Secretary for Economic Development Operations and public interest groups and other private sector organizations on all matters concerned with a place oriented approach to development.

Sec. 7. OFFICE OF MANAGEMENT AND ADMINISTRATION.

The Office of Management and Administration shall be responsible for providing the full range of administrative services and for management and organization analysis and evaluation functions. These functions shall be carried out through the principal organizational elements of the Office, as prescribed below, except that personnel management services, accounting for administrative funds, and in-house equal opportunity staff services shall be obtained from the appropriate Departmental offices.

.01 The *Management Analysis Division* shall:

Conduct organization and management studies and surveys; plan and conduct a program for achieving maximum economy, effectiveness, and efficiency, and for obtaining optimum personnel utilization; develop and conduct a program for the efficient management of all official records, including an issuance system for administrative and program orders, and the design and control of official forms; and develop and administer a report control system for all administrative and operational reports.

.02 The *Budget Division* shall:

Develop and manage an integrated financial management and budgeting system for EDA. It shall develop and prepare the annual budget for EDA; be responsible for the total financial program of EDA, and for the fiscal aspects of EDA programs entrusted to other Federal agencies; and operate a fiscal control system for both program and administrative expenses consistent with the requirements of the Anti-Deficiency Act, which shall include but not be restricted to, allotment of funds, operating budgets, employment limitations, and analyses of reports and proposed actions relating thereto.

.03 The *Accounting Division* shall:

Develop and maintain accounting systems and prepare financial reports for internal and external use, according to the needs of management, the requirements of laws or regulations, and established policies; analyze financial and operating data to assure that financial and management policies are being followed; and serve as the liaison with the Office of the Secretry and other Federal agencies in all accouning matters.

.04 The *Information Systems and Services Division* shall:

Plan, develop, acquire, and coordinate the use of automatic data processing systems and equipment for EDA; provide data processing services, including the conduct of feasibility studies and the development of systems and programs for the applications of automatic data processing techniques; develop and maintain a comprehensive information and data base system to meet specified requirements for administrative, planning, operational, program management, and program evaluation purposes; and provide periodic and special summary reports on current optional trends and performance comparisons to planned goals.

.05 The *Office Services Division* shall:

Provide or arrange for office services for EDA's headquarters and, as required, for the Regional Offices, including the procurement of administrative supplies, vehicle hire, furniture, equipment, and the distribution of printed and bound materials; evaluate, report on, and make recommendations on the utilization of space, supplies, equipment, communications, and related services within EDA; and serve as liaison with the Office of the Secretary on office services matters.

Sec. 8. OFFICE OF THE CHIEF COUNSEL.

The Office of the Chief Counsel shall:

a. Render all necessary legal services, subject to the provisions of Department Organization Order 10-6;

b. Have primary responsibility for the preparation, coordination, and clearance of all legislation, regulations, and external orders subject to the provisions of applicable Department orders; and

c. Establish uniform overview standards and procedures to be followed by the Regional Offices' legal staffs in their review of projects under Sections 101 and 201 of the Act.

Sec. 9. OFFICE OF PUBLIC AFFAIRS.

The Office of Public Affairs shall:

a. Advise on all public information matters;

b. Conduct a public information program under the policy guidance of the Assistant Secretary in collaboration with the Departmental Office of Public Affairs; and

c. Provide assistance in the editing, printing or reproduction, and distribution of technical materials and publications.

SEC. 10. *OFFICE OF CONGRESSIONAL RELATIONS.*

The Office of Congressional Relations shall:

a. Advise on all Congressional matters pertinent to the activities under the direction of the Assistant Secretary; and

b. Serve as the primary point of coordination for continuing liaison with the Congress in collaboration with the

Assistant Secretary for Congressional Affairs.

SEC. 11. *OFFICE OF CIVIL RIGHTS.* The Office of Civil Rights shall:

a. Advise the Assistant Secretary in the development and implementation of policy and guidance affecting equality of opportunity connected with economic development programs;

b. Maintain liaison with Federal, State and local governmental organizations and with non-governmental organizations to coordinate and assist in planning operations aimed at achieving nondiscrimination and equality of opportunity;

c. Provide leadership, staff services and advice in matters affecting nondiscrimination to economic development program units, to organizations obligated as participants in an economic development program to achieve nondiscrimination, and to ultimate beneficiaries of economic development program activities;

d. Conduct, sponsor, or coordinate meetings, conferences, and training courses for equal employment specialists, program managers, and executives to achieve nondiscrimination in economic development programs;

e. Establish effective systems throughout EDA to obtain and monitor reports concerning the program of equality of opportunity and assure conformance thereto;

f. Establish report requirements to insure equality or opportunity by participants in economic development programs, conduct on-site inspections, and receive, investigate, and adjust complaints;

g. Receive, investigate, review, adjust complaints, and evaluate EDA experience relating to the Equal Employment Opportunity program and make recommendations to the Assistant Secretary for improvement of employment practices within EDA; and

h. Establish uniform overview standards and procedures to be followed by the Regional Offices' Civil Rights staff in their reviews of projects under Sections 101 and 201 of the Act.

SEC. 12. *ECONOMIC DEVELOPMENT REGIONAL OFFICES.*

.01 The Economic Development Regional Offices, headed by Regional Directors, are as follows:

Name	Located at	Serves
Atlantic	Philadelphia, Pa.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.
Southeastern	Atlanta, Ga.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Midwestern	Chicago, Ill.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Rocky Mountain	Denver, Colo.	Colorado, Kansas, Iowa, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.
Southwestern	Austin, Tex.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Western	Seattle, Wash.	Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

02. Each Regional Director, for the EDA programs in his region, shall:

a. Assist designated areas and districts in organizing, staffing, and funding for economic planning through the development of OEDPs;

b. Assist local communities in the development of applications for finanical assistance to meet the needs of areas and districts serviced by the Regional Office;

c. Process applications for economic development assistance, monitor and service approved projects, including appropriate public works construction projects and, when appropriate, liquidate projects.

d. Forward appropriate processed public works projects documents to EDA headquarters with recommendations to the Assistant Secretary for approval or denial. On projects which require special action, Washington staff offices will review the project file and recommend approval or disapproval to the Assistant Secretary.

ROBERT T. HALL,
Assistant Secretary for Economic Development.

Approved:

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc. 79-4711 Filed 2-12-79; 8:45 am]

[3510-16-M]

[Department Organization Order 30-3B; Amdt. 2]

PATENT AND TRADEMARK OFFICE

JANUARY 12, 1979.

This order effective January 12, 1979 further amends the material appearing at 41 FR 37831 of August 19, 1976 and 42 FR 44832 of September 7, 1977.

Department Organization Order 30-3B, dated August 19, 1976, is hereby further amended as shown below. The purpose of this amendment is to (1) establish the Office of Equal Employment Programs (paragraph 4.05), (2) change gender-indicative wording and designate the Deputy Commissioner to direct the Office of Equal Employment Programs (section 3), and (3) remove responsibility for equal opportunity programs from the Office of Personnel (paragraph 8.06).

1. *SEC. 3. COMMISSIONER OF PATENTS AND TRADEMARKS.* a. In pen and ink, remove the word "He" appearing in the fourth line and substitute the words "The Commissioner."

b. Paragraph 3.a. is revised to read as follows:

"a. The *Deputy Commissioner* shall assist the Commissioner in the direction of the Patent and Trademark Office; shall perform the duties of the Commissioner in the latter's absence; and shall direct the Office of Equal Employment Programs."

c. In pen and ink, remove the word "He" appearing in the fourth line of paragraph 3.b., and substitute the words "The Assistant Commissioner for Patents."

d. In pen and ink, remove the word "He" appearing in the fourth and seventh lines of paragraph 3.d., and substitute the words "the Solicitor" (capitalize "The" in the seventh line).

e. In pen and ink, remove the word "He" appearing in the fifth and seventh lines of paragraph 3.e., and substitute the words "the Assistant Commissioner for Administration" (capitalize "The" in the seventh line).

2. *SEC. 4. ORGANIZATIONS REPORTING TO THE COMMISSIONER.* A new paragraph .05 is added to read as follows:

".05 The *Office of Equal Employment Programs,* under the immediate direction of the Deputy Commissioner, shall be responsible for the design, development, implementation, review, and maintenance of all Patent and Trademark Office Equal Employment Opportunity (EEO) programs; including EEO complaint processes, the Affirmative Action Plan, upward mobility programs and other special emphasis programs such as those for women, Hispanic-Americans, the handicapped,

and all protected groups and classes of employees."

3. *SEC. 8. OFFICES REPORTING TO THE ASSISTANT COMMISSIONER FOR ADMINISTRATION.* Paragraph .06 is revised to read as follows:

".06 The *Office of Personnel* shall administer activities relating to recruitment, placement, employee relations, training and career development, incentive awards, performance rating, position classification and wage administration, group-management relations, and various employee benefit programs."

4. The organization chart attached to this amendment, supersedes the organization chart dated August 11, 1977. A copy of the organization chart is on file with the original of this document in the Office of the FEDERAL REGISTER.

DONALD W. BANNER,
Commissioner of Patents and Trademarks.
JORDAN BARUCH,
Assistant Secretary for Science and Technology.

Approved:

GUY W. CHAMBERLIN, Jr.,
Deputy Assistant Secretary.

[FR Doc. 79-4710 Filed 2-12-79; 8:45 am]

[6330-01-M]

COMMISSION OF FINE ARTS

MEETING

Amendment

The Commission of Fine Arts will meet in open session on Tuesday, February 20, 1979, at 10:00 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

This is an amendment to the notice appearing in the January 5, 1979 issue of the FEDERAL REGISTER (44 FR 1442) announcing the calendar year 1979 meeting schedule.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C., February 5, 1979.

CHARLES H. ATHERTON,
Secretary.

[FR Doc. 79-4655 Filed 2-12-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1058-7; OPP-30160]

PESTICIDE PROGRAMS

Receipt of Application To Register Pesticide Product Containing New Active Ingredient

Ciba-Geigy Corp., Agricultural Div., PO Box 11422, Greensboro, NC 27409, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product CGA-48988 TECHNICAL (EPA File Symbol 100-ANR) containing 90% of the active ingredient *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester which has not been included in any previously registered pesticide products. The applicant proposes that this product be used as a technical chemical for formulating fungicides.

Notice of receipt of this application does not indicate a decision by the Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW, Washington DC 20460. The comments must be received on or before March 15, 1979, and should bear a notation indicating the EPA File Symbol "100-ANR." Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application and the data submitted should be directed to Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202/755-2562. The label furnished by Ciba-Geigy Corp., as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of this application to register CGA-48988 TECHNICAL will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: February 1, 1979.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 79-4648 Filed 2-12-79; 8:45 am]

[6560-01-M]

[FRL 1059-7]

AVAILABILITY OF ENVIRONMENTAL IMPACT STATEMENTS

AGENCY: Office of Federal Activities, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of January 22 to February 2, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from February 9, 1979 and will end on March 26, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Federal Activities, EPA for further information.

BACK COPIES OF EIS's: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT:

Kathi Weaver Wilson, Office of Federal Activities, A-104, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with

EPA during the week of January 29 to February 2, 1979, the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the FEDERAL REGISTER and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V set forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: February 8, 1979.

WILLIAM N. HEDEMAN, Jr.,
Director,
Office of Federal Activities.

APPENDIX I

EIS'S FILED WITH EPA DURING THE WEEK OF JANUARY 29 TO FEBRUARY 2, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447-3965.

FOREST SERVICE

Draft

Encampment River Wild and Scenic River Study, Jackson County, Colorado, February 2: Proposed is the inclusion in the National Wild and Scenic River, the Colorado Portion of the Encampment River along with 6,240 acres of adjacent lands in Routt National Forest, Jackson County, Colorado. The statement also discusses Rare II, the development of a Mt. Zirkel Wilderness management plan and the development of a forest land and resource management plan for the Medicine Bow National Forest. Four alternatives are considered. (DES-02-11-79-01-IFG). (EIS order No. 90134.)

Piedmont Block Timber Management Plan, Sumter National Forest, several counties in South Carolina, January 30: Proposed is the implementation of a 10-year timber management plan for the Piedmont Block of the Sumter National Forest in the counties of Abbeville, Chester, Edgefield, Fairfield, Greenwood, Laurens, McCormick, Newberry, Saluda, and Union, South Carolina. The plan proposes to continue even-aged management for sustained yield timber production, with modifications for areas with special importance for other uses. Other features include: (1) Thinning and regeneration, (2) reforestation, (3) precommercial thinning, (4) release treatment and (5) noncommercial thinning/fertilization/burning. (USDA-FS-R8-DES-ADMIN-79-01.) (EIS order No. 90112.)

Final

Logan Planning Unit, Flathead National Forest, Flathead and Lincoln Counties in Montana, January 31: This project concerns a land management plan for the Logan Planning Unit, Flathead National Forest in Flathead and Lincoln Counties, Montana. The proposed action will affect 89,200 acres of land which is divided into six management units of similar resource potentials and problems. The major features of the plan provide for: (1) Recreation, (2) visual corridors, (3) high output of wood products, (4) wildlife habitat, (5) protection of trout habitat, and (6) roadless areas. (USDA-FS-RI-(10)-FES-ADM-78-10.) Comments made by: DOE, DOI, USDA, State agencies, groups. (EIS order No. 90119.)

E. Shore Flathead Lake Planning Unit, Flathead National Forest, Flathead and Lake Counties in Montana, January 31: Proposed is a revised multiple use plan for east shore Flathead Lake Planning Unit in Flathead National Forest. The action affects 16,400 acres of national forest land. The recommended plan calls for 5,560 acres maximum timber production, 4,500 acres low intensive timber management, 4,070 acres low intensity timber management, 2,180 acres elk and deer winter range dispersed recreation, and 90 acres for intensive recreation. (USDA-FS-RI-(10)-FES-ADM-78-2.) Comments made by: DOI, USDA, DOT, State and local agencies, groups, individuals and businesses. (EIS order No. 90118.)

River of No Return Wilderness, several counties in Idaho, February 2: Proposed is the designation of 1,889,288 acres of national forest lands as part of the National Wilderness Preservation System. The designation area is located in Boise, Challis, Payette, Salmon, Bitterroot, and Nezperce National Forests in the Counties of Custer, Idaho, Lemhi, and Valley, Idaho State and includes parts of the Idaho Primitive Area and Salmon River Breaks Primitive Area. The plan also recommends: (1) The area be named the River of No Return Wilderness, and (2) primitive area status be rescinded from 15,957 acres, and another 15,765 acres recommended for designation under the Wild and Scenic Rivers Act. The DEIS was entitled Salmon River & Idaho Wilderness Area. Comments made by: DOI, DOC, State and local agencies. (EPA order No. 90133.)

Satsop Block land management plan, Olympic National Forest, Grays Harbor and Mason Counties, Wash., January 31: The proposed action is to develop a comprehensive land management plan for the Satsop Block planning unit. The proposal affects 14,329 acres of land and water administered by the Forest Service in the Shelton Ranger District located in Grays Harbor and Mason Counties, Washington. The conditions existing within the planning unit are the result of a long-term timber sale, as such, 85% of the area has been harvested using the clearcutting system. The unit is completely surrounded by Forest Service and Simpson Timber Company land committed to the Shelton Cooperative sustained yield unit. (USDA-FS-R6-FES-(ADM)-78-12.) Comments made by: EPA, USDA, DOI, State agencies, groups and businesses. (EIS order No. 90117.)

SOIL CONSERVATION SERVICE

Draft

Trinity River watershed, project completion, several counties, Texas, January 29: Proposed is the completion of the Trinity River watershed project which involves several counties in Texas. The remaining work to be completed includes: (1) Applying conservation land treatment on 299,000 acres and critical area treatment on 27,000 acres of agricultural lands; (2) installing 134 floodwater retarding structures; (3) 3 multipurpose structures with basic recreational development areas; (4) 10 riprap structures, and (5) 15.93 miles of channel work, (USDA-SCS-EIS-WS-(ADM)-79-1-(D)-TX.) (EIS order No. 90107.)

Final

Southeast Choctawhatchee River watershed, Dale, Houston, Geneva Counties, Ala., Janauary 31: Proposed is a project for watershed protection, land stabilization, and recreation to be implemented under authority of the Watershed Protection and Flood Prevention Act. The planned works of improvement include accelerated conservation land treatment, critical area treatment and roadside stabilization, stabilization of about 609 gullies, and construction of a 780-acre single-purpose recreation lake and recreational facilities. The project is located in the counties of Dale, Houston, and Geneva, Alabama. (USDA-SCS-EIS-WS-(ADM)-77-2-(F)-AL.) Comments made by: USDA, USA, DOC, DOI, EPA, State agencies (EIS order No. 90116.)

CIVIL AERONAUTICS BOARD

Contact: Mr. Steve Rothenburg, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5205.

Final

Oakland Air Service Case, Docket 30699, several counties, Calif., February 2: Proposed by the CAB is new and improved authority in following Oakland markets: Albuquerque, Atlanta, Boston, Chicago, Dallas/Ft. Worth, Denver, Detroit, Houston, Kansas City, Minneapolis/St. Paul, Philadelphia, Phoenix, Portland, Salt Lake City, and Seattle. This will be considered through the Oakland service case. The Board has tentatively decided to adopt a policy of awarding permissive, subsidy-ineligible authority in each market where a need for new authority is shown to every fit, willing and able applicant whose illustrative service proposal indicates that it is prepared to satisfy any part of that need. Comments made

by: EPA, USDA, COE, State and local agencies (EIS order No. 90130.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, SW., Washington, D.C. 20314, (202) 693-6795.

Draft

Pipeline and-wastewater outfall in Mobile Bay, Mobile County, Ala., January 31: Proposed is the installation, operation and maintenance of a 30-inch outside diameter pipeline that would carry waste from the Theodore Industrial Park near Theodore, Mobile County, Alabama, in a site in west-central Mobile Bay. The landward portion of the pipeline would pass beneath three small tributaries of the Deer River and would be buried six feet deep in the bottom near shore and three feet deep for the rest of the distance. Placement of the pipeline in the bay would be by jetting or excavation and backfill. (Mobile District) (EIS Order No. 90115.)

Grove Isle (Fair Isle) Marina, Miami, Dade County, February 2: Proposed is the construction of a concrete fixed-pier marina and appurtenant facilities with a docking capacity of about 98 boats on the west side of Grove Isle (formerly Fair Isle), Dade County, Florida. Construction will consist of three concrete fixed piers extending a maximum of 250 feet into Biscayne Bay, and another extending 150 feet into the bay. About 44 finger piers would be constructed as slips for the five piers. (Jacksonville District) (EIS Order No. 90135.)

Louisville Lake, Little Wabash River Basin, Clay and Effingham Counties, Ill., January 29: Proposed is the development of Louisville Lake as a multipurpose project for flood control, water supply, general recreation, and fish/wildlife related recreation. The lake will be located in the counties of Clay and Effingham, Illinois, on the Little Wabash River. The project would control storm runoff from an area of 661 square miles. The total project land requirements would be approximately 20,950 acres. (Louisville District) (EIS Order No. 90106.)

Port Ontario, Harbor of Refuge, Mexico Bay, Oswego County, N.Y., January 30: Proposed is a harbor of refuge plan for Port Ontario in the Mexican Bay, Oswego County, New York. The plan will include: (1) A south breakwater about 1,450 feet long, (2) a north breakwater about 350 ft. in length, (3) dredging of the lake entrance channel to eight feet below LWD where necessary, (4) dredging of a short river channel, and (5) boating facilities. Seven alternate plans are considered. The COE filed a draft EIS, No. 80229, dated 3-9-78 which is replaced by this revised statement. (Buffalo District) (EIS Order No. 90111.)

Final

Weston Generating Unit 3, Wausau, Permit, Marathon County, Wis., February 1: The proposed action is the issuance of Federal permits relating to the construction and operation of a 300 MW coal-fired steam generating unit at the Weston Generating Station located on a 144-acre tract in Marathon County, Wisconsin about 8 miles south of the city of Wausau in a combined agricultural, residential, and industrial area. The Weston 3 Generating Station is proposed to meet projected growth in electrical demand beginning in the early 1980's. The size and type of the proposed plant is determined by analysis which considers: (1) The level of system reliability desired; (2) the cost of constructing and operation. (St. Paul District), comments made by: EPA, USDA, DOC, HEW, DOI, USCG, DOT, State agencies (EIS Order No. 90127.)

Draft Supplement

Snake River Interstate Bridge, Nes Perce County, Idaho and Asotin County, Wash., January 29: This statement supplements a final EIS filed in July 1975 concerning the Lower Granite Lock and Dam project. This statement proposes the construction of a four-lane highway bridge and approaches crossing the Snake River, connecting the towns of Lewiston in Nez Perce County, Idaho and Clarkston in Asotin County, Washington. The present lift span bridge is felt to be unreliable which could cause serious delays of the inter-city emergency services. (Walla Walla District) (EIS Order No. 90108.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Draft

Virgin Islands coastal management program, Virgin Islands, February 1: Proposed is a coastal zone management program for the Virgin Islands. Approval would permit implementation of the proposed program, allow program administration grants to be awarded to the territory, and require that Federal actions be consistent with the program. The program addresses general areas of particular concern and site. Specific recommendations. (EIS Order No. 90129.)

Final

Stone Crab, fishery managment plan, Gulf of Mexico, January 30: Proposed is a fishery management plan for the Stone Crab Fishery in the Gulf of Mexico conservation zone from the Florida-Alabama line southwest to and including the Florida Keys. The basic objectives of the management plan are: (1) Orderly conduct of the fishery to reduce conflict between other fisheries in the area, (2) establishment of a fishery statistical reporting system for monitoring the Stone Crab Fishery, (3) full utilization of the Stone Crab resource in the management area, and (4) promote uniformity of regulation throughout the management area. Comments made by: DOI, EPA, MMC, and businesses. (EIS Order No. 90113.)

DEPARTMENT OF ENERGY

Contact: Mr. Robert Stern, Acting Director, Division of NEPA Affairs, Department of Energy, Mail Station E-201 GIN, Washington, D.C. 20545, (202) 376-5998.

Final

Motor gasoline deregulation, regulatory, January 30: Proposed is the deregulation exemption of motor gasoline from price and allocation controls. All 50 States, the District of Columbia, Puerto Rico, the Virgin Islands and Guam would be affected by the action. The purpose of this action is to remove Government regulation which, in the case of allocation controls, was initiated during the 1973-74 petroleum embargo and in the case of price controls, has antecedents in the 1970 economic stabilization program. Other proposed and completed Federal actions discussed include the recently issued gasoline tilt and rent pass through regulations and the proposed petroleum product allocation and price regulation. (DOE/EIS-0039-D.) Comments made by: CIA, EPA, GSA, HEW, FTC, DOJ, NRC, TREA, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90114.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Clinton Spotts, Region VI, Environmental Protection Agency, First International Bldg., 1202 Elm Street, Dallas, Texas 75270, (214) 767-2716.

Draft

Fayette power project, NPDES permit, Fayette County, Tex., February 2: Proposed is the issuance of a NPDES permit for wastewater discharge from the Fayette power project into Cedar Creek in the County of Fayette, Texas. The applicant has initiated construction on a coal-fired steam electric station on a site located seven miles from La Grange. Some features of the project include: (1) Two 600 MWE fossil-fueled steam electric generating units, (2) associated coal handling and storage areas, and (3) 121 miles of new or widened transmission corridor. (EIS Order No. 90132.)

Contact: Mr. Ed Vest, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64103, (816) 374-2921.

Final

Proposed expansion of existing WWT facilities, Scotts Bluff County, Nebr., February 2: The proposed project is the granting of financial assistance for the improvements of publicly owned sewage threatment plants in Scotts Bluff County, Nebraska. The municipalities which own and operate these facilities are Gering, Scotts Bluff, and Terrytown, Nebraska. Together these municipalities constitute the major trade and manufacturing center in the Nebraska panhandle. This EIS was prepared to evaluate the potential effects of these proposed actions upon the North Platte River, Scotts Bluff County, and the surrounding area. (EPA-907/9-79-001.) Comments made by: HEW, DOI, State agencies, groups, and individuals. (EIS Order No. 90136.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6306.

Draft

Sugarmill Subdivision, Fort Bend County, Tex., January 31: Proposed is the issuance of HUD home mortgage insurance for the Sugarmill subdivision in Fort Bend County, Texas. The development will encompass approximately 370 acres. When completed the project will contain approximately 1,250 single-family homes plus some shopping and

recreational facilities. (HUD-R06-EIS-2D.) (EIS Order No. 90124.)

Final

Terrestria planned unit development, Stone Bridge, Camden County, N.J., January 31: The proposed action concerns the issuance of land acquisition/development, and subdivision feasibility mortgage insurance for the residential development of Terrestria (Stone Bridge Run), Gloucester Township, Camden County, New Jersey. The development will consist of mixed residential uses with 2,765 dwelling units of a variety of types including single-family detached, townhouses, duplexes, and high rise apartments. Seven acres are to be used for shopping and 81 acres of flood plain will be left undeveloped. (HUD-R02.) Comments made by: HEW, DOC, HUD, AHP, EPA, VA, GSA, DOT, DOI, State and local agencies. (EIS Order No. 90121.)

Section 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

Marina/Columbia residential development, San Diego County, Calif., February 1: Proposed is the Marina/Columbia residential development in the core of downtown San Diego in San Diego County, California. The project is currently being planned as a residential community, containing between 2,000 and 3,000 multilevel, multifamily dwelling units. Neighborhood convenience and commercial development will be incorporated into the development. (EIS Order No. 90128.)

DEPARTMENT OF THE INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

BUREAU OF LAND MANAGEMENT

Final

OCS Sale No. 48, Offshore Southern California, several counties in California, January 31: Proposed is the leasing action for 217 (1,141,818 acres) of OCS lands in southern California. The tracts are located in the following six general offshore areas: Santa Barbara, Channel, Santa Rosa, Santa Barbara Island, San Pedro Ray, Tanner-Cortes, Dana Point-San Diego. Five alternatives are considered which include: (1) Hold the sale in modified form, (2) alternate development scenarios, (3) delay sale, (4) withdraw the sale, and (5) alternate local government stipulations. Comments made by: EPA, DOI, DOC, MMC, DOT, USN, COE, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90120.)

Seven Lakes grazing management program, Fremont, Sweetwater; and Carbon County, Wyo., January 31: The action proposed concerns the Seven Lakes area located in Fremont, Sweetwater and Carbon Counties, Wyoming. The proposal recommends that three allotment management plans (AMPS) be fully implemented. These AMPS would consist of deferred rotation or deferred grazing systems for 15 livestock operators. Recommended use of the area is 54,869 winter sheep animal unit months (AUMS) for livestock: 1,325 winter sheep AUMS for wildlife; and 464 winter sheep AUMS for wild horses. Livestock rotation would be accomplished by fencing, herding and selected water developments. (USDI-FES-79-5.) Comments made by: EPA, NRC, AHP, USDA, DOI, State and local agencies, and groups. (EIS Order No. 90122.)

A 15-day waiver has been granted for the following EIS (see FR 2/5/79, Appendix III).

BUREAU OF MINES

Final

Surface Mining Control and Reclamation Act, 501(b), Regulatory, January 29: Proposed is the promulgation of a permanent regulatory program, under section 501(b) of the Surface Mining Control and Reclamation Act of 1977. The three major components which comprise this proposal are: (1) Regulations concerning environmental performance standards, permit applications, and bonding requirements; (2) procedure regulations for submission of State programs and for review criteria used for approval; and (3) regulations governing development and implementation of a Federal program for a State. (FES-79-3.) Comments made by: CWPS, DOC, USDA, HEW, HUD, EPA, State and local agencies, groups and businesses. (EIS Order No. 90109.)

NATIONAL PARK SERVICE

Draft

Badlands National Park master plan, Pennington, Jackson, and Shannon Counties, S. Dak., February 1: Proposed is a conceptual master plan for the development, interpretation, and management of the Badlands National Park (formerly known as the Badlands National Monument), located in the counties of Pennington, Jackson, and Shannon, South Dakota. The plan includes development of a system of roads and motor nature trails, construction of campgrounds, picnic areas, concession facilities, interpretive centers, and administrative facilities. (DES-79-7.) (EIS Order No. 90125.)

Draft Supplement

Haleakala National Park, boundary expansion, Maui County, Hawaii, January 29: This statement supplements a final EIS filed in February 1973 concerning the Haleakala National Park in Maui, Hawaii. This program proposes to extend the park boundaries to include buffer zones for existing use areas and to provide needed trail access. Total additions proposed are about 952 acres, plus about 8 acres for the Kaupo Trail right-of-way and parking at the lower trail terminus. Changes in facilities are limited to replacement of some outdated facilities, campground expansion on the west crater rim, and provision of minimal visitor and management facilities in the Ohea area. (DES-79-6.) (EIS Order No. 90110.)

NATIONAL CAPITAL PLANNING COMMISSION

Contact: Ms. Patricia Spillenkothen, Chief, Office of Environmental Affairs, National Capitol Planning Commission, Washington, D.C. 20576, (202) 382-7200.

Draft Supplement

Washington, D.C., Civic Center, site location, District of Columbia, February 2: this statement supplements a final EIS filed in November 1977. Proposed are site locations and the program for the Washington, D.C., Civic Center and the transfer of jurisdiction over reservation 174 from the National park Service to the District of Columbia. The basic purpose of the Civic Center will be to provide a large meeting and exhibition facility. Amendments to the final EIS include: (1) Air quality, (2) natural features, (3) transportation, (4) energy/resource conservation, (5) the physical/economic character, and (6) social/demographic character. (EIS Order No. 90131.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

TN-33, bypass of Maryville, TN-115/TN-95 to TN-73, Blount County, Tenn., February 2: Proposed is the construction of a four-lane divided highway which would serve as the southern section of a bypass for the cities of Maryville and Alcoa, to be known as the bypass of Maryville, in Blount County, Tenn. The lengths for the various alternatives considered range from approximately 5.7 miles to approximately 11.4 miles. The bypass will begin near the intersection of TN-115 and TN-95 on the west side of Maryville to TN-73 east of the city. (FHWA-TN-EIS-78-07-D.) (EIS Order No. 90137.)

VA-220, construction, VA-43 to VA-60, Alleghany and Botetrourt Counties, Va., January 29: Proposed is the construction of a four-lane controlled access arterial highway beginning approximately 3 miles north of Route 43 and running in a northerly direction, terminating at its intersection with Route 60 for a total average length of 12.7 miles, known as VA-220, in Alleghany and Botetourt Counties, Va. Nine alternatives are considered. (FHWA-VA-EIS-79-01-D.) (EIS Order No. 90105.)

U.S. COAST GUARD

Final

Puget Sound vessel traffic/radar surveillance, several counties in Washington, January 31: The proposed action consists of improving the existing Puget Sound vessel traffic service (PSVTS) current consisting of a vessel traffic separation scheme (TSS) and a vessel movement reporting system (VMRS) for the Strait of Juan of Fuca, Rosario Strait, and Puget Sound from Admiralty Inlet to Tacoma. The PSVTS also provides for radar surveillance from Admiralty Inlet to Seattle and mandatory vessel control. The proposal entails the expansion and upgrading of the existing PSVTS radar surveillance system and extending the radar coverage to include the Strait of Juan de Fuca, Rosario Strait, Puget Sound south 10 North ' ashom Island. Comments made by: EPA, DOI, USDA, DOC, DOT, State and local agencies, individuals. (EIS Order No. 90123.)

[FR Doc. 79-4740 Filed 2-12-79; 8:45 am]

[6560-01-C]

APPENDIX II

EXTENSION/WAIVER OF REVIEW PERIODS ON EIS'S FILED WITH EPA

FEDERAL AGENCY CONTACT	TITLE OF EIS	FILING STATUS ACCESSION NO.	DATE NOTICE OF AVAILABILITY PUBLISHED IN FR	WAIVER EXTENSION	DATE REVIEW TERMINATES
DEPARTMENT OF TRANSPORTATION					
R. MARTIN CONVISSER, DIRECTOR OFFICE OF ENVIRONMENTAL AFFAIRS U.S. DEPARTMENT OF TRANSPORTATION 400 7TH STREET, S.W. WASHINGTON, D.C. 20590 (202) 426-4357	I-97, BALTIMORE - ANNAPOLIS CORRIDOR	DRFT 90230	01/15/79	EXTENSION	03/26/79
DEPARTMENT OF AGRICULTURE					
R. BARRY FLAMM COORDINATOR ENVIRONMENTAL QUALITY ACTIVITIES US DEPARTMENT OF AGRICULTURE ROOM 412A WASHINGTON, D.C. 20250 (202) 447-3965	RARE II, ROADLESS AREA REVIEW AND EVALUATION	FINL 90230	01/15/79	EXTENSION	03/15/79

APPENDIX III

EIS'S FILED WITH EPA WHICH HAVE BEEN OFFICIALLY WITHDRAWN BY THE ORIGINATING AGENCY

FEDERAL AGENCY CONTACT	TITLE OF EIS	FILING STATUS ACCESSION NO.	DATE NOTICE OF AVAILABILITY PUBLISHED IN FR	DATE OF WITHDRAWAL

NONE

APPENDIX IV

NOTICE OF OFFICIAL RETRACTION

FEDERAL AGENCY CONTACT	TITLE OF EIS	STATUS UPON PUBLICATION	DATE NOTICE PUBLISHED IN FR	REASON FOR RETRACTION
US ARMY CORPS OF ENGINEERS				
DR. C. GRANT ASH OFFICE OF ENVIRONMENTAL POLICY ATTN: DAEN-CWR-P OFFICE OF THE CHIEF OF ENGINEERS U.S. ARMY CORPS OF ENGINEERS 1000 INDEPENDENCE AVENUE, S.W. WASHINGTON, D.C. 20314 (202) 693-6795	HARBORS AND RIVERS OF GUAM	FINL 81255	12/06/1978	DISTRIBUTION OF THE FINAL EIS WAS NOT MADE WHEN THE NOTICE OF AVAILABILITY WAS PUBLISHED BY EPA. THE RETRACTION WAS PUBLISHED IN FR 12/18/1978 AND THE EIS WAS REFILED JANUARY 10, 1979.
	SMALL BOAT HARBOR KODIAK, ALASKA	FINL 81272	12/11/1978	DISTRIBUTION OF THE FINAL EIS WAS NOT MADE WHEN THE NOTICE OF AVAILABILITY WAS PUBLISHED BY EPA. THEREFORE, THE NOTICE OF THE EIS IS RETRACTED AND REFILED AS OF JANUARY 26, 1979.
	CHETCO RIVER JETTY EXTENSION, OREGON	FINL 81269	12/11/1978	DISTRIBUTION OF THE FINAL EIS WAS NOT MADE WHEN THE NOTICE OF AVAILABILITY WAS PUBLISHED BY EPA. THEREFORE, THE NOTICE OF THE EIS IS RETRACTED AND REFILED AS OF JANUARY 24, 1979.

APPENDIX V

AVAILABILITY OF REPORTS/ADDITIONAL INFORMATION RELATING TO EIS'S PREVIOUSLY FILED WITH EPA

FEDERAL AGENCY CONTACT	TITLE OF REPORT	DATE MADE AVAILABLE TO EPA	ACCESSION NO.

NONE

APPENDIX VI

OFFICIAL CORRECTION

FEDERAL AGENCY CONTACT	TITLE OF EIS	FILING STATUS ACCESSION NO.	DATE NOTICE OF AVAILABILITY PUBLISHED IN FR	CORRECTION

NONE

[6560-01-M]

[FRL 1059-4]

IMPLEMENTATION PLAN REVISIONS FOR NONATTAINMENT AREAS IN GEORGIA AND SOUTH CAROLINA

Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA announces today that the Georgia and South Carolina implementation plan revisions due for submittal by January 1, 1979, under the Clean Air Act Amendments of 1977 have been received and are available for public inspection. The public is invited to submit written comments. A notice of proposed rulemaking describing the revisions will be published in the FEDERAL REGISTER later; the period for the submittal of written comments will extend for 30 days after the publication of the Notice of Proposed Rulemaking.

ADDRESSES: The Georgia and South Carolina submittals may be examined during normal business hours at the following EPA offices:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

In addition, the Georgia revisions may be examined at the offices of the Georgia Air Protection Branch, Environmental Protection Division, Department of Natural Resources, 270 Washington Street, S.W., Atlanta, Georgia 30334; and the South Carolina revisions, at the office of the South Carolina Bureau of Air Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Comments should be addressed to the EPA Region IV Air Programs Branch, 345 Courtland St., N.E., Atlanta, Georgia 30308.

FOR FURTHER INFORMATION CONTACT:

Harriet Smith (Georgia) or Melvin Russell (South Carolina) of EPA's Region IV Air Programs Branch. Ms. Smith may be reached by telephone at 404/881-3286 (FTS 257-3286); Mr. Russell, at 404/881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Section 172 of the Clean Air Act, as amended 1977, requires that States submit revisions in their implementation plans by January 1, 1979, to provide for the attainment of the national ambient air quality standards in areas designated nonattainment. On March 3, 1978, the Administrator designated a number of areas in Georgia and South Carolina as nonattainment (43 FR 8962). These States have responded by preparing implementation plan revisions as required by the Clean Air Act. The purpose of this notice is to call the public's attention to the fact that these have been formally submitted and are available for public inspection. Also, the public is encouraged to submit written comments on them. A description of the revisions will be published in the FEDERAL REGISTER at a later date as part of a notice of proposed rulemaking.

(Sections 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: January 31, 1979.

JOHN C. WHITE,
Regional Administrator,
Region IV.

[FR Doc. 79-4743 Filed 2-12-79; 8:45 am]

[6560-01-M]

[FRL 1059-8]

WATER PROGRAMS

Determination of Primary Enforcement Responsibility; State of Ohio

This public notice is issued under section 1413 of the Safe Drinking Water Act of 1977, Pub. L. 95-190, (Amending 42 U.S.C. 300f et seq.), and 40 CFR 142.10, National Interim Primary Drinking Water Regulations, published at 41 FR 2918 (January 20, 1976).

An application, dated December 21, 1977, has been received from the Director of the Ohio Environmental Protection Agency, requesting that the Ohio Environmental Protection Agency be granted primary enforcement responsibility for public water systems in the State of Ohio, in accordance with the provisions of this Act.

In response, I have determined, as Regional Administrator of the U.S. Environmental Protection Agency, Region V, that the Ohio Environmental Protection Agency has met all conditions of the Safe Drinking Water Act and subsequent regulations for the assumption of primary enforcement responsibility for public water systems in the State of Ohio.

The State—

(1) Has adopted drinking water regulations which are no less stringent than the National Interim Primary Drinking Water Regulations;

(2) Has adopted and will implement adequate procedures for the enforcement of such State regulations, including adequate monitoring and inspections;

(3) Will keep such records and make such reports as required;

(4) Will issue variances and exemptions in accordance with the provisions of the National Interim Primary Drinking Water Regulations; and

(5) Has adopted and can implement an adequate lan for the provision of safe drinking water under emergency circumstances.

All documents relating to this determination are available for public inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Office of Public Water Supply, Ohio Environmental Protection Agency, 361 E. Broad Street, Columbus, Ohio 43216.

Water Supply Branch, U.S. Environmental Protection Agency, Region V., 230 South Dearborn Street, Chicago, Illinois 60604.

All interested parties are invited to submit written comments on this determination. Written comments must be received within 30 days after this notice is issued.

Further information may be obtained by writing the Water Supply Branch of the U.S. Environmental Protection Agency, Region V, or the Office of Public Water Supply, Ohio Environmental Protection Agency or by calling Joseph F. Harrison at (312) 353-2151 or James Kneale (614) 466-8310.

A public hearing may be requested by any interested person. Frivolous or insubstantial requests for a public hearing may be denied; however, if a substantial request is received on or before March 15, 1979, a public hearing will be held and notice will given in the FEDERAL REGISTER and newspapers of general circulation. Such requests shall be addressed to me, Regional Administrator, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, and shall include the following information:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in my determination and information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If no timely request for a hearing is received, my determination shall become effective March 15, 1979.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: February 6, 1979.

VALDAS V. ADAMKUS,
Regional Administrator, U.S. Environmental Protection Agency, Region V.

[FR Doc. 79-4744 Filed 2-12-79; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

NEGOTIABLE ORDERS OF WITHDRAWAL

The Federal Home Loan Bank Board, by action taken on January 4, 1979, has authorized all Federal savings and loan associations which are permitted to issue Negotiable Orders of Withdrawal (NOW), to participate in check verification and check guarantee programs for their NOW accountholders. Any Federal association proposing to participate in any such program is required to give written notice to the appropriate Bank Board Supervisory Agent thirty days prior to becoming an active participant.

RONALD A. SNIDER
Assistant Secretary.

[FR Doc. 79-4702 Filed 2-12-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before March 5, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-2623-2.
Filing party: E. F. Brimo, Treasurer, Global Terminal & Container Services, Inc., P.O. Box 273, Jersey City, New Jersey 07303.
Summary: Agreement No. T-2623-2, between Global Terminal & Container Services, Inc., (Global) and Dart Containerline Company, Ltd., (Dart), modifies the parties' basic agreement providing that Global will furnish Dart container terminal and stevedoring services at its facility at New York harbor. The purpose of the modification is to make certain changes to Global's liability at the leased facilities.

Agreement No. T-2625-1.
Filing party: E. F. Brimo, Treasurer, Global Terminal & Container Services, Inc., P.O. Box 273, Jersey City, New Jersey 07303.
Summary: Agreement No. T-2625-1, between Global Terminal & Container Services, Inc., (Global) and Dr. August Oetker Schiffahrts Und Beteiligungs-Ges MBH (Columbus), modifies the parties' basic agreement providing that Global will furnish Columbus Container terminal and stevedoring services at its facility at New York harbor. The purpose of the modification is to make certain changes to Global's liability at the leased facilities.

Agreement No. Y-3775.
Filing party: Albert B. Dearden, Deputy Chief, Leases & Operating Agreements Division, The Port Authority of NY & NJ, One World Trade Center, New York, New York 10048.
Summary: Agreement No. T-3775, between the Port Authority of New York and New Jersey (Port) and Farrell Lines, Inc. (Farrell), provides for the month-to-month lease of Pier 11 at the Brooklyn-Port Authority Marine Terminal, New York, New York, for use by Farrell as a public marine terminal facility. As compensation, Farrell will pay the Port the greater of $2 multiplied by the revenue tons handled at the facility, or $375,000 per annum, not to exceed a maximum annual payment of $750,000. Farrell will be subject to all Port rules and regulations, including tariffs, and will have the exclusive right to collect wharfage and dockage from all vessels calling at the facility.

Agreement No. T-3376-2.
Filing party: Randall V. Adams, Traffic, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.
Summary: Agreement No. T-3376-2, between the Port of Palm Beach District (Port) and Caribbean Lines Corporation (CLC), modifies the parties' basic agreement providing for the lease of CLC of premises located in Palm Beach, Florida. This second modification to the basic agreement also serves the purpose of extending the term of the agreement for an additional one-year period, as well as revising the rental.

By order of the Federal Maritime Commission.

Dated: February 7, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-4739 Filed 2-12-79; 8:45 am]

[6325-01-M]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

CANCELLATION OF MEETING

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463) notice was published in 44 FR 12 of January 17, 1979, that a meeting of the Federal Prevailing Rate Committee would be held on February 15, 1979. Notice is hereby given that the meeting scheduled for Thursday, February 15, 1979, has been cancelled.

JEROME H. ROSS,
Chairman, Federal Prevailing Rate Advisory Committee.

FEBRUARY 9, 1979.

[FR Doc. 79-4846 Filed 2-12-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

WORMALD INTERNATIONAL, LTD.

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Wormald International Limited is granted early termination of the waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of The Ansul Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Wormald International. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: January 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20480 (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976,

requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-4751 Filed 2-12-79; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on February 6, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before March 2, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL COMMUNICATIONS COMMISSION

The FCC requests clearance of a new Form 506, Application for Ship Radio Station License and Temporary Permit. Form 506 will be required to be filed when applying for a new, modified, or renewed ship station license. The Commission is initiating a system of temporary permits for ship stations in the maritime services which will eliminate the present procedure of requiring licensees or their agents to appear in person at the FCC Field Office to request a temporary permit while their applications are being processed. As part of Form 506, a temporary permit has been included (Form 506-A) which constitutes a permit not to exceed 60 days, once applicants have determined whether they have met all the requirements for holding such a permit. The new Form 506 will eliminate the use of FCC Form 501, Application for Ship Radio Station License, and FCC Form 502, Application for Shiptelephone and/or Radionavigation Station License. The FCC estimates respondent burden will average 45 minutes per application and that approximately 72,000 applications will be received yearly.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 79-4728 Filed 2-12-79; 8:45 am]

[1610-01-M]

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on February 6, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before March 5, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

NUCLEAR REGULATORY COMMISSION

The NRC requests an extension without change clearance of Form NRC-396, Certification of Medical Examination-Facility Operators License. Form NRC-396 implements 10 CFR Part 55, section 55.11, which requires the Commission to make a finding that the physical condition and general health of applicants for both Operator's and Senior Operator's Licenses are not such as might cause operational errors endangering public health and safety. Each form submitted is reviewed by the NRC physician and licenses are issued to individuals with, or without, conditions, or the application is denied based on physical conditions. The NRC estimates that the burden for licensees per physical is approximately 5 hours and that 1,500 forms are submitted annually.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 79-4729 Filed 2-12-79; 8:45 am]

[4110-87-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

SAFETY AND OCCUPATIONAL HEALTH STUDY SECTION

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following National Institute for Occupational Safety and Health Committee meeting:

Name: Safety and Occupational Health Study Section.

Date: March 5-6-7-8, 1979.

Time and Place: Open March 5, 9 a.m. to 5:30 p.m., Conference Room East-505, Health Science Center, U. of Texas School of Public Health, 6905 Bertner Avenue, Houston, Texas 77030.

Time and Place: Closed March 6-7-8, 8 a.m. to 5 p.m., Coronado Room, Sheraton Houston, 777 Polk Avenue, Houston, Texas 77002.

Contact Person: Harvey P. Stein, Ph.D., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 8-63, Rockville, Maryland 20857, Telephone: 301-443-4493.

Purpose: The committee is charged with the initial review of research, training, demonstration, and fellowship grant applications for Federal assistance in program areas administered by the National Institute for Occupational Safety and Health, and with advising the Institute staff on training and research needs.

Agenda: Agenda items for the open portion of the meeting, March 5, 1979, 9 a.m. to 5:30 p.m., will include consideration of minutes of previous meeting, administrative and staff reports, status of National Institute for Occupational Safety and Health (NIOSH) safety research program, overview of nationwide Educational Resource Centers (ERCs), and report on the University of Texas ERC and its safety research component. Beginning at 8 a.m., March 6, 1979, through adjournment on March 8, 1979, the Study Section will be performing the initial review of research grant and training grant applications for Federal Assistance, and will not be open to the public, in accordance with the provi-

sions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Center for Disease Control, pursuant to Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: February 5, 1979.

WILLIAM H. FOEGE,
Director, Center for Disease Control.

[FR Doc. 79-4700 Filed 2-12-79; 8:45 am]

[4110-08-M]

National Institutes of Health

ANIMAL RESOURCES REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, February 28 and March 1, 1979, Room 4A, Building 31, National Institutes of Health, Bethesda, Maryland 20014.

The meeting will be open to the public on February 28 from 1:00 p.m. to recess, during which time there will be a brief staff presentation on the current status of the Animal Resources Program, and on March 1 from 8:30 a.m. to 5:00 p.m., during which time there will be a workshop on pasteurellosis in rabbits. The Committee will select future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 28 from 8:00 a.m. to 12:00 noon for the review, discussion, and evaluation of individual grant applications submitted to the Laboratory Animal Sciences Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Dennis O. Johnsen, Executive Secretary of the Animal Resources Review Committee, Room 5B55, Bldg. 31, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-5175, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.306, National Institutes of Health)

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 79-4662 Filed 2-12-79; 8:45 am]

[4110-08-M]

ARTERIOSCLEROSIS AND HYPERTENSION ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis and Hypertension Advisory Committee, National Heart, Lung, and Blood Institute, April 23-24, 1979, Conference Room 6C-01, 6th Floor, Federal Building, 7550 Wisconsin Avenue, Bethesda, MD. The entire meeting will be open to the public from 9:00 am to 5:00 pm on Monday, April 23 and on Tuesday, April 24 to evaluate program support in Arteriosclerosis and Hypertension. Attendance by the public will be limited on a space available basis.

Mr. York Onnen, chief, Public Inquiries and Reports Branch, NHLBI, Room 5A-03, Building 31, National Institutes of Health, Bethesda, Maryland 20014, Phone (301) 496-4236, will provide summaries of the meeting and rosters of committee members.

Dr. Gardner C. McMillan, Associate Director for Etiology of Arteriosclerosis and Hypertension Program, NHLBI, Room 516, Federal Building, National Institutes of Health, Bethesda, Maryland 20014, Phone (301) 496-1613, will furnish substantive program information.

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 79-4670 Filed 2-12-79; 8:45 am]

[4110-08-M]

BOARD OF SCIENTIFIC COUNSELORS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, March 26-28, 1979, Building 31, 6th floor, "C" wing, Conference Room 10, National Institutes of Health. This meeting will be open to the public on March 26 and 27, 1979, from 8:30 a.m. to 5:30 p.m., and again on March 28, 1979, from 8:30 a.m. until recess, to review program plans, followup on status of budget and a review of the clinical trials program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 27, 1979, from 6:30 p.m. to 9:30 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Vincent T. DeVita, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A-52, National Institutes of Health, Bethesda, Maryland 20014 (301-496-4291) will furnish summaries of meetings, rosters of committee members, and substantive program information.

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 79-4668 Filed 2-12-79; 8:45 am]

[4110-08-M]

CANCER CONTROL GRANT REVIEW COMMITTEE

Change in Meeting Date and Time

Notice is hereby given of a change in meeting date and time for the Cancer Control Grant Review Committee, National Cancer Institute, March 5-6, 1979, which was published in the FEDERAL REGISTER on January 24, 1979 (44 FR 5004).

The meeting will now be held three days, March 4-6, 1979, starting at 3:00 p.m., on March 4, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20014. The meeting will be open to the public from 3:00 p.m.-3:30 p.m. and closed to the public from 3:30 p.m. to 7:00 p.m. on March 4 and all day March 5 and 6 to review research grant applications, as stated in the notice. Attendance by the public will be limited to space available.

For further information, please contact Dr. Robert F. Browning, Westwood Building, Room 806, National Institutes of Health, Bethesda, Maryland 20014 (301/496-7413).

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 79-4663 Filed 2-12-79; 8:45 am]

[4110-08-M]

CELLULAR AND MOLECULAR BASIS OF DISEASE REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cellular and Molecular Basis of Disease Review Committee, National Institute of General Medical Sciences, March 12-13, 1979, at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on March 12, 1979, from 8:30 a.m. until 9:00 a.m. for background information and discussion of issues relevant to the National Institute of General Medical Sciences and its National Research Service Award training activities and research program. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Title 5, U.S. Code 552b(c)(6) the meeting will be closed to the public on March 12, 1979, from 9:00 a.m. until 5:00 p.m. and on March 13, 1979, from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications. These applications could reveal personal information concerning individuals associated with the applications.

Mr. Paul Deming, Research Reports Officer, NIGMS, National Institutes of Health, Room 9A05, Westwood Building, Bethesda, Maryland 20014, Telephone: 301/496-7301, will provide a summary of the meeting and a roster of committee members.

Dr. Lee Van Lenten, Executive Secretary, Cellular and Molecular Basis of Disease Review Committee, NIGMS, National Institutes of Health, Room 907, Westwood Building, Bethesda, Maryland 20014 (Telephone: 301/496-7621) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-863; General Medical Sciences)

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4666 Filed 2-12-79; 8:45 am]

[4110-08-M]

GENERAL RESEARCH SUPPORT REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Research Support Review Committee, Division of Research Resources, March 8-9, 1979, from 9:00 a.m. to 5:00 p.m. in Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20014.

This meeting will be open to the public from 9:00 a.m. to 1:30 p.m. on March 8, 1979, to discuss administrative matters relating to the programs. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 8, 1979, from 1:30 p.m. to 5:00 p.m., and on March 9, 1979, from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications submitted to the Minority Biomedical Support Program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20014, telephone AC 301-496-5545, will provide summaries of meetings and rosters of committee members. Dr. Sidney A. McNairy, Jr., Executive Secretary of the General Research Support Review Committee, Building 31, Room 5B33, Bethesda, Maryland 20014, telephone AC 301-496-6743 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.375, National Institutes of Health).

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4664 Filed 2-12-79;8:45 am]

[4110-08-M]

HEART, LUNG, AND BLOOD RESEARCH REVIEW COMMITTEE B

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, March 30, 1979, Conference Room 6, Building 31, C Wing, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on March 30, 1979, from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 30, 1979, from 9:30 AM until the adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Room 5A03, Building 31, Bethesda, Maryland 20014, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Henry G. Roscoe, Executive Secretary, NHLBI, NIH, Room 554, Westwood Building, Bethesda, Maryland 20014, phone (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, 13.838, 13.839, National Institutes of Health)

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4669 Filed 2-12-79; 8:45 am]

[4110-08-M]

NATIONAL DIABETES ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Diabetes Advisory Board on March 13, and 14, 1979, at the Old Town Holiday Inn, 480 King Street, Alexandria, Virginia.

The Executive Committee meeting will be held on March 13, 1979, 3:00 p.m. The Board meeting will be held on March 14, 1979, 9:00 a.m.

The meetings, which will be open to the public, are being held to continue review of the status and implementation of national diabetes programs. Attendance by the public will be limited to space available.

Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Maryland 20014, (301) 496-6045, will provide summaries of the meetings and a roster of the committee members.

(Catalog of Federal Domestic Assistance Program No. 13.847, National Institutes of Health.)

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4667 Filed 2-12-79; 8:45 am]

[4110-08-M]

NIH PUBLIC ADVISORY COMMITTEES

Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the National Institutes of Health announces the renewal by the Secretary, HEW, with the concurrence of the Office of Management and Budget Committee Management Secretariat, of the following committees: National Arthritis Advisory Board; National Diabetes Advisory Board.

Authority for the above committees will expire on September 30, 1980.

Dated February 1, 1979.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 79-4661 Filed 2-12-79; 8:45 am]

[4110-08-M]

PHARMACOLOGY-TOXICOLOGY REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pharmacology-Toxicology Review Committee, National Institute of General Medical Sciences, March 8-9, 1979, National Institutes of Health, Building 31C, Conference Room 9, Bethesda, Maryland.

This meeting will be open to the public on March 8 from 9:00 a.m. to 10:30 a.m. for opening remarks and general administrative business. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Title 5, U.S. Code 552b(c)(6), the meeting will be closed to the public on March 8 from 10:30 a.m. to 5:00 p.m. and on March 9 from 9:00 a.m. to 5:00 p.m. or adjournment for the review, discussion and evaluation of individual grant applications. These applications could reveal personal information concerning individuals associated with the applications.

Mr. Paul Deming, Research Reports Officer, NIGMS, Westwood Building, Room 9A05, Bethesda, Maryland 20014, Telephone: 496-7301, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. Martha Panitch, Executive Secretary, Pharmacology-Toxicology Review Committee, Westwood Building, Room 953, Bethesda, Maryland, Telephone: 301, 496-7585.

(Catalog of Federal Domestic Assistant Program 13-859, Pharmacology-Toxicology Program, National Institute of General Medical Sciences, National Institutes of Health).

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4665 Filed 2-12-79; 8:45 am]

[4110-08-M]

SOMATIC CELL GENETICS WORKSHOP

Meeting

Notice is hereby given of the workshop on Mutation and Gene Transfer in Somatic Cells, sponsored by the National Cancer Institute's Division of Cancer Biology and Diagnosis, April 23, 24, 25, 1979, Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. until adjournment each day. Subjects to be discussed include the nature of mutations in somatic cells in culture, and various means of transferring genes and chromosomes between somatic cells. Attendance by the public will be limited to space available.

Dr. Michael Gottesman, senior investigator, National Cancer Institute, Building 37, Room 2E22, Bethesda, Maryland (301/496-1530) will provide additional information.

Dated: February 5, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4671 Filed 2-12-79; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF 2, 7 - DICHLORODIBENZO - P - DIOXIN (DCDD) FOR POSSIBLE CARCINOGENICITY

Availability

2,7-dichlorodibenzo-p-dioxin (DCDD) (CAS 33857-26-0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of 2,7,-dichlorodibenzo-p-dioxin (DCDD) for possible carcinogenicity was conducted by administering the test chemical in feed to Osborne-Mendel rats and B6C3F1 mice. The chemical is formed as a by-product in the synthesis of chlorophenol and is a contaminant in the herbicide 2,4,5-T and the pesticide pentachlorophenol.

It is concluded that under the conditions of this bioassay, DCDD was not carcinogenic for Osborne-Mendel rats of either sex or for female B6C3F1 mice. The marginal increased incidences of combinations of leukemias and lymphomas, of hemangiosarcomas and hemangiomas, and of hepatocellular carcinomas and adenomas in male B6C3F1 mice, however, provided evidence which was suggestive but under the conditions of the experiment was insufficient to establish the carcinogenicity of 2,7-dichlorodibenzo-p-dioxin in these animals.

Single copies of the report, Bioassay of 2,7-Dichlorodibenzo-p-dioxin (DCDD) for Possible Carcinogenicity (T.R. 123), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: February 2, 1979.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 79-4156 Filed 2-12-79; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF P,P'-ETHYL-DDD FOR POSSIBLE CARCINOGENICITY

Availability

p,p'-ethyl-DDD (CAS 72-56-0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of p,p'-ethyl-DDD for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use as an insecticide.

It is concluded that under the conditions of this bioassay, p,p'-ethyl-DDD was not carcinogenic for male or female F344 rats or male B6C3F1 mice. However, the occurrence of hepatocellular carcinomas and adenomas in female mice provided evidence which was suggestive but under the conditions of the experiment was insufficient to establish a carcinogenic effect.

Single copies of the Bioassay of p,p'-Ethyl-DDD for Possible Carcinogenicity (T.R.156), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: February 2, 1979.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 79-4157 Filed 2-12-79; 8:45 am]

[4110-85-M]

Office of the Assistant Secretary for Health

HEALTH MAINTENANCE ORGANIZATIONS

November Listing

AGENCY: Public Health Service, HEW

ACTION: Notice, November list of qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be qualified health maintenance organizations. In addition, the service area of a previously qualified HMO has been amended to reflect changes in zip code designations. This additional information follows the listing of this month's qualified HMOs.

FOR FURTHER INFORMATION CONTACT:

Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Regulations issued under Title XIII of the Public Health Service Act, as amended (42 CFR 110.605(b), require that a list and description of all newly qualified HMOs be published on a monthly basis in the FEDERAL REGISTER. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)):

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Name, address, service area, and date of qualification

(Operational Qualified Health Maintenance Organizations: 42 CFR § 110.603(a))

1. The Toledo Plan/dba Health Plus, (Staff Model, see Section 1310(b)(1) of the Public Health Service Act) 4346 Secor Road, Suite #105, Toledo, Ohio 43623. Service area: Lucas County, Perrysburg and Rossford in Wood County and the following zip codes in Ohio:

43601-43624	43571	43504
43460	43465	43560
43551	43558	43537
43566	43528	43542

Date of qualification: October 31, 1978. (Achieved preoperational qualification on October 31, 1978, see 43 FR 60366 dated 12/27/78.)

2. Fallon Community Health Plan, Inc., (Group Model, see Section 1310(b)(1) of the Public Health Service Act), 630 Plantation Street, Worcester, Massachusetts 01605. Service area: Municipalities of Worcester County, Massachusetts: Auburn, Berlin, Boylston, Clinton, Grafton, Holden, Leicester, Millbury, Northboro, Northbridge, Oxford, Paxton, Princeton, Rutland, Shewsbury, Spencer, Sterling, Sutton, Upton, Webster, West Boylston, Westboro, and Worcester. Date of qualification: November 21, 1978.

AMENDED SERVICE AREA

A service area listed in the annual cumulative list of qualified HMOs and published on April 7, 1978, in the FEDERAL REGISTER (43 FR 14908-13) is amended as follows:

1. California Medical Group Health Plan, Inc., 1880 Century Park East, Suite 1500, Los Angeles, California 90067. Service area:

[4110-85-C]

Change from:

Los Angeles County California

90001	90028	90061	90250	90501	90723	91016
90002	90029	90062	90254	90502	90731	91020
90003	90031	90063	90255	90503	90732	91024
90004	90032	90064	90260	90504	90744	91030
90005	90033	90065	90262	90505	90745	91040
90006	90034	90066	90265	90506	90746	91042
90007	90035	90067	90266	90601	90747	91046
90008	90036	90068	90270	90602	90801	91101
90010	90037	90069	90272	90603	90802	91103
90011	90038	90071	90274	90604	90803	91104
90012	90039	90201	90277	90605	90804	91105
90013	90040	90210	90278	90606	90805	91106
90014	90041	90211	90280	90638	90806	91107
90015	90042	90212	90290	90640	90807	91108
90016	90043	90220	90291	90650	90808	91201
90017	90044	90221	90301	90660	90810	91301
90018	90045	90222	90302	90670	90812	91302
90019	90046	90230	90303	90701	90813	
90020	90047	90240	90304	90706	90814	
90021	90048	90241	90305	90710	90815	
90022	90049	90242	90401	90712	90840	
90024	90056	90245	90402	90713	91001	
90025	90057	90247	90403	90715	91006	
90026	90058	90248	90404	90716	91010	
90027	90059	90249	90405	90717	91011	
91303	91342	91406	91605	91733	91770	93532
91304	91343	91411	91606	91738	91773	93534
91306	91344	91423	91607	91740	91775	93543
91307	91350	91436	91608	91744	91776	93544
91310	91351	91501	91702	91745	91780	93550
91311	91352	91502	91706	91746	91789	93553
91316	91355	91504	91711	91750	91790	93563
91321	91364	91505	91722	91754	91791	
91324	91401	91506	91723	91765	91792	
91331	91402	91601	91724	91766	91801	
91335	91403	91602	91731	91767	91803	
91340	91405	91604	91732	91768	93510	

Orange County California

90620	90743	92631	92646	92660	92669	92683	92707
90621	92621	92632	92647	92661	92670	92686	92708
90623	92624	92633	92648	92662	92672	92687	92709
90630	92625	92640	92649	92664	92675	92701	92801
90631	92626	92641	92650	92665	92676	92703	92802
90720	92627	92643	92651	92666	92677	92704	92804
90740	92629	92644	92653	92667	92678	92705	92805
90742	92630	92645	92655	92668	92680	92706	92806
							92807

Riverside County California*

91720	91752	91760	92330	92370	92388	92501
92503	92504	92505	92506	92507	92508	92509

*Zip codes included a 30 mile radius of the health center.

Santa Barbara County California

93013	93017	93067	93101	93103	93105	93108
93109	93110	93111	93427	93441	93460	93463

San Bernardino County California

91701	91710	91730	91739	91743	91761	91762
91763	91764	91786	92316	92318	92324	92335
92346	92354	92369	92373	92376	92401	92404
92405	92407	92408	92409	92410	92411	

San Diego County California

92001	92021	92045	92077	92108	92118	92127	92145
92002	92024	92050	92078	92109	92119	92128	92154
92007	92025	92064	92101	92110	92120	92129	92155
92008	92027	92065	92102	92111	92121	92131	92162
92010	92032	92067	92103	92113	92122	92133	
92011	92035	92069	92104	92114	92123	92135	
92014	92037	92071	92105	92115	92124	92137	
92017	92040	92073	92106	92116	92125	92139	
92020	92041	92075	92107	92117	92126	92140	

Ventura County California

91320	91361	93010	93021	93042	93065
91360	91362	93015	93040	93063	

Change to:

Los Angeles County California

90001	90028	90061	90250	90501	90723	91016
90002	90029	90062	90254*	90502	90731	91020
90003	90031	90063	90255	90503	90732	91024
90004	90032	90064	90260	90504	90744	91030
90005	90033	90065	90261*	90505	90745	91040
90006	90034	90066	90262	90506	90746	91042
90007	90035	90067	90265	90601	90747	91046
90008	90036	90068	90270	90602	90748*	91101
90009*	90037	90069	90272	90603	90749*	91103
90010	90038	90071	90274	90604	90801	91104
90011	90039	90201	90277	90605	90804	91105
90012	90040	90210	90278	90606	90805	91106
90013	90041	90211	90280	90631*	90806	91107
90014	90042	90212	90290	90638	90807	91108
90015	90043	90220	90291	90640	90808	91201
90016	90044	90221	90301	90650	90810	91209*
90017	90045	90222	90302	90660	90812	91301
90018	90046	90230	90303	90701	90813	91302
90019	90047	90240	90304	90706	90814	91303
90020	90048	90241	90305	90710	90815	91304
90021	90049	90242	90401	90712	90840	91306
90022	90054*	90245	90402	90713	91001	91307
90023*	90056	90246*	90403	90715	91006	91310
90024	90057	90247	90404	90716	91010	91311
90025	90058	90248	90405	90717	91011	91316
90026	90059	90249				

91321	91350	91423	91606	91733	91767	91801
91324	91351	91436	91607	91738	91768	91802*
91325*	91352	91501	91608	91740	91770	91803
91326*	91355	91502	91702	91744	91773	93510
91331	91364	91504	91706	91745	91775	93532
91335	91401	91505	91711	91746	91776	93534
91340	91402	91506	91722	91748*	91780	93543
91342	91403	91601	91723	91750	91789	93544
91343	91405	91602	91724	91754	91790	93550
91344	91406	91604	91731	91765	91791	93553
91345*	91411	91605	91732	91766	91792	93563

*added zip codes

Orange County California

90620	90742	92632	92644	92655	92669	92687
90621	90743	92633	92645	92660	92670	92701
90622*	92621	92634*	92646	92661	92672	92702*
90623	92624	92636*	92647	92662	92675	92703
90624*	92625	92637*	92648	92663*	92676	92704
90630	92626	92638*	92649	92664	92677	92705
90631	92627	92640	92650	92665	92678	92706
90680*	92629	92641	92651	92666	92680	92707
90720	92630	92642*	92652*	92667	92683	92708
90740	92631	92643	92653	92668	92686	92709
92710*	92713*	92715*	92717*	92802	92805	92807
92711*	92714*	92716*	92801	92804	92806	

Riverside County California

91720	91752	91760	92330	92370	92388	92501	92502*
92503	92504	92505	92506	92507	92508	92509	

Santa Barbara County California

93013	93017	93067	93101	93103	93105	93108
93109	93110	93111	93427	93441	93460	93463

San Bernardino County California

91701	91710	91730	91739	91743	91761	91762	
91763	91764	91786	92316	92318	92324	92335	
92346	92354	92369	92373	92376	92401	92404	
92405	92407	92408	92409	92410	92411		

San Diego County California

92001	92021	92045	92077	92108	92118	92127	92145
92002	92024	92050	92078	92109	92119	92128	92154
92007	92025	92064	92101	92110	92120	92129	92155
92008	92027	92065	92102	92111	92121	92131	92162
92010	92032	92067	92103	92113	92122	92133	
92011	92035	92069	92104	92114	92123	92135	
92014	92037	92071	92105	92115	92124	92137	
92017	92040	92073	92106	92116	92125	92139	
92020	92041	92075	92107	92117	92126	92140	

*added zip codes

Ventura County California

91320	91361	93010	93021	93042	93065
91360	91362	93016	93040	93063	

[4110-85-M]

Date of qualification: Transitionally qualified—July 19, 1977.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, 3rd Floor, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified HMOs should be sent to the same office.

Dated: February 5, 1979.

HOWARD R. VEIT,
Director, Office of Health Maintenance Organizations.

[FR Doc. 79-4706 Filed 2-12-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 35958]

NEW MEXICO

Notice of Application

FEBRUARY 6, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Company of America has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 28 E.,
Sec. 25, NE¼SW¼ and S½SW¼;
Sec. 35, E½NE¼ and N½SE¼.

This pipeline will convey natural gas across 1.077 miles of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be processing with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Rosewell, New Mexico 88201.

STELLA V. GONZALES,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4707 Filed 2-12-79; 8:45 am]

[4310-55-M]

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Greater Baton Rouge Zoo, Greenwood Park, P.O. Box 60, Baker, Louisiana 70714.

The applicant requests a permit to purchase in interstate commerce two (2) male cotton-topped tamarins (*Saguinus oedipus*) from the Overton Park Zoo, Memphis, Tennessee, for enhancement of propagation.

The tamarins are presently located at the Greater Baton Rouge Zoo on breeding loan from the Overton Park Zoo.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3751. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 15, 1979. Please refer to the file number when submitting comments.

Dated: February 7, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-4732 Filed 2-12-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Applicant: International Animal Exchange, 570 Livernois, Ferndale, Michigan 48220.

The applicant requests a permit to deliver in foreign commerce between South West Africa (Namibia) and Taiwan five male and five female cheetahs (*Acinonyx jubatus*) for the purpose of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3786. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 15, 1979. Please refer to the file number when submitting comments.

Dated: February 8, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-4737 Filed 2-12-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Applicant: National Biocentric, Inc., 2233 Hamline Ave., North, St. Paul, Minnesota 55113.

The applicant requests a permit to conduct a survey and to take up to two specimens of Higgin's eye mussels (*Lampsilis higginsi*) at seven bridge sites on the Minnesota and Mississippi Rivers in Minnesota in order to determine the presence and distribution of the species.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3772. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 15, 1979. Please refer to the file number when submitting comments.

Dated: February 5, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-4731 Filed 2-13-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Applicant: National Zoological Park, Washington, D.C. 20008.

The applicant requests a permit to import one male maned wolf (*Chrysocyon brachyurus*) from and export one female maned wolf to the Rotterdam Zoo, Netherlands, in breeding exchange for enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal

business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3687. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 15, 1979. Please refer to the file number when submitting comments.

Dated: February 8, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and wildlife Service.

[FR Doc. 79-4736 Filed 2-12-79; 8:45 am]

[4310-55-M]

ENDANGERED AND THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Dr., West, Atlanta, Georgia 30329.

The applicant requests a permit to take or import up two specimens each of Atlantic ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), green (*Chelonia mydas*), and loggerhead (*Caretta caretta*), and olive ridley (*Ledpidochelys olivacea*) sea turtles for the purpose of scientific research. The animals will be sacrificed for analysis to identify specific characteristics of parts and products for each species.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3768. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 15, 1979. Please refer to the file number when submitting comments.

Dated: February 7, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-4734 Filed 2-12-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Zoological Society of Philadelphia, 34th and Girard Ave., Philadelphia, Pennsylvania 19104.

The applicant requests a permit to purchase in interestate commerce one (1) male and one (1) female mandrill (*Papio sphinx*) from the Cheyenne Mountain Zoological Park, Colorado Springs, Colorado, for enhancement of propagation.

The mandrills are presently held by the Zoological Society of Philadelphia on breeding loan from the Cheyenne Mountain Zoological Park.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3623. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 15, 1979. Please refer to the file number when submitting comments.

Dated: February 7, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-4735 Filed 2-12-79; 8:45 am]

[4310-55-M]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

The applicants listed below wish to apply for Captive Self-Sustaining Population permits authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of cats listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

These applications and supporting documents are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, USFWS, WPO, Washington, D.C. 20240. Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Applicant: Soco Gardens Zoo, Route No. 1 Box 355, Maggie Valley, North Carolina; PRT 2-3756; Species: all cats.

Applicant: Alfonso Magana, 2621 Mall Dr., Sarasota, Florida 33581; PRT 2-3774; Species: Leopard (*Panthera pardus*).

Please refer to the individual applicant and the appropriately assigned PRT 2- file number when submitting comments.

Dated: February 7, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-4733 Filed 2-12-79; 8:45 am]

[4310-55-M]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: James E. Coffey & Sons, 4843 Greenwood Terrace, Cincinnati, Ohio 45226.

The applicant wishes to apply for a Captive-Self Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of education, all species of animals listed in 50 CFR Section 17.11 as T(C/P). The applicant wishes to buy and sell preserved specimens only.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

This application has been assigned file number PRT 2-3511. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 15, 1979. Please refer to the file number when submitting comments.

Dated: February 1, 1979.

LARRY LAROCHELLE,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-4738 Filed 2-12-79; 8:45 am]

[4310-55-M]

SEA WORLD

Notice of Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take walrus as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18).

1. Applicant:

a. Name: Sea World.

b. Address: 1720 So. Shores Rd., San Diego, California 92109.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Walrus (*Odobenus rosmarus*), 8.

4. Type of Activity: Capture.

5. Location of Activity: Offshore water of St. Lawrence Island, Little Diomede Island and mainland Alaska.

6. Period of Activity: March 1, 1979 through December 31, 1981.

The purpose of this application is to receive authorization to capture 8 walrus for use in public displays in Sea World facilities in California, Florida and Ohio and to collect behavioral data on courtship, breeding and other stages of development.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-3542. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, on or before March 15, 1979. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United State Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia.

Dated: February 2, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 79-4730 Filed 2-12-79; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before February 2, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by February 23, 1979.

WILLIAM J. MURTAGH,
Keeper of the National Register.

CONNECTICUT

Litchfield County

Norfolk, *Norfolk Historic District*, U.S. 44 and CT 272.

New London County

Lebanon, *Lebanon Green Historic District*, CT 87 and W. Town St., Stonington, *Stonington*.

ILLINOIS

Cook County

Arlington Heights, *Muller House*, 500 N. Vail Ave.
Barrington, *Octagon House*, 223 W. Main St.
Chicago, *Notre Dame de Chicago*, 1338 W. Flournoy St.
Chicago, *Reebie Storage and Moving Company*, 2325—33 N. Clark St.
Palatine, *Clayson, George, House*, 224 E. Palatine Rd.

DeKalb County

DeKalb, *Gurler, George H., House*, 205 Pine St.

Kane County

Batavia vicinity, *Campana Factory*, N of Batavia on N. Batavia Ave.

Menard County

Athens vicinity, *North Sangamon United Presbyterian Church*, N of Athens on SR 2.

INDIANA

Porter County

Beverly Shores, *1933 World's Fair and Lustron District*, 104 State Park Rd., 103, 204, 208, 210, 212, 214, and 215 Lake Front Dr.

MARYLAND

Baltimore (independent city)

Walters Bath No. 2, 900 Washington Blvd.

Cecil County

Providence vicinity, *Hopewell*, NW of Providence.
Providence vicinity, *Little Elk Farm*, NW of Providence.

Dorchester County

Cambridge vicinity, *Dale's Right*, S of Cambridge.

Harford County

Joppatowne vicinity, *Old Joppa Site*, off U.S. 40.

MASSACHUSETTS

Essex County

Peabody, *Peabody Central Fire Station*, 41 Lowell St.

Middlesex County

Waltham, *Boston Manufacturing Company*, 144 Moody St.

MISSISSIPPI

Yazoo County

Yazoo City, *Yazoo City Town Center Historic District*, irregular pattern along Main, Madison, and Broadway Sts.

NEW HAMPSHIRE

Rockingham County

Rye, *Isles of Shoals*, Appledore Island and environs (also in York County, ME).

NEW JERSEY

Middlesex County

East Brunswick, *Kearney, Edward S., House*, NJ 18.
Perth Amboy, *Simpson United Methodist Church*, High and Jefferson Sts.

NEW MEXICO

De Baca County

Fort Sumner vicinity, *Fort Sumner Railroad Bridge*, 2 mi. (3.2 km) W of Fort Sumner over Pecos River.

NEW YORK

Erie County

West Seneca, *Eaton Site*.

Onondaga County

Syracuse, *Hawley-Green Street Historic District*, Green St. and Hawley Ave.

Suffolk County

Mastic Beach, *Floyd, William, House (Old Mastic House)* 20 Washington Ave.

OREGON

Clackamas County

Oregon City, *Milne, James, House*, 504 3rd St.

Jackson County

Medford, *South Oakdale Historic District*, irregular pattern along S. Oakdale Ave. from Stewart Ave. to W. 10th St.

Linn County

Albany, *Flinn Block*, 222 SW. 1st Ave.
Albany, *United Presbyterian Church and Rectory*, 510 SW. 5th Ave.

Multnomah County

Portland, *Ambassador Apartments*, 1209 SW. 6th Ave.
Portland, *Ashley, Mark A. M., House*, 2847 NW. Westover Rd.
Portland, *Brainard, William E., House*, 5332 SE. Morrison St.
Portland, *Cotillion Hall*, 406 SW. 14th Ave.
Portland, *Nicholas-Lang House*, 2030 SW. Vista Ave.
Portland, *Railway Exchange Building*, 320 SW. Stark St.

Union County

LaGrande vicinity, *Hot Lake Resort*, SE of LaGrande on OR 203.

TENNESSEE

Davidson County

Nashville, *Utopia Hotel*, 206 4th Ave. North.

Montgomery County

Clarksville vicinity, *Riverview*, W of Clarksville on Cumberland Heights Rd.

Weakley County

Gardner, *Caldwell, William Parker, House*, off TN 22.

TEXAS

Freestone County

Teague, *Trinity and Brazos Valley Railroad Depot and Office Building*, 208 S. 3rd Ave.

Galveston County

Galveston, *Galveston Orphans Home*, 1315 21st St.

UTAH

San Juan County

Bluff, *Bluff City Historic District*, UT 47.

WISCONSIN

Jefferson County

Watertown, *Chicago and Northwest Railroad Passenger Station*, 725 W. Main St.

Winnebago County

Oshkosh, *Buckstaff Observatory*, 2119 N. Main St.

[FR Doc. 79-4405 Filed 2-12-79; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-Inq.-24]

CERTAIN 45 R.P.M. ADAPTORS FROM THE UNITED KINGDOM

Inquiry and Hearing

The United States International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on January 30, 1979, that during the course of determining, in accordance with section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)) whether to institute an investigation with respect to certain 45 R.P.M. adaptors from the United Kingdom, Treasury had concluded from the information available to it that there is substantial doubt that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States. Therefore, the Commission on February 7, 1979, instituted inquiry No. AA1921-Inq.-24, under section 201(c)(2) of the act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Treasury advised the Commission as follows:

DEAR MR. CHAIRMAN: In accordance with section 201(c) of the Antidumping Act of 1921, as amended, an antidumping investigation is being initiated with respect to 45 R.P.M. flat and round spindle adaptors from the United Kingdom. Pursuant to section 201(c)(2) of the Act, you are hereby advised that the information developed during our preliminary investigation has led me to the conclusion that there is a substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the importation of this merchandise into the United States.

The basis for my determination are summarized in the attached copy of the Antidumping Proceeding Notice in this case. Additional information will be provided by the U.S. Customs Service.

Some of the information involved in this case is regarded by Treasury to be of a confidential nature. It is therefore requested that the Commission consider all the information provided for its investigation to be for the official use of ITC only and not to be disclosed to others without prior clearance from the Treasury Department.

Sincerely,

ROBERT H. MUNDHEIM.

Hearing.—A public hearing in connection with the inquiry will be held in Washington, D.C., at 10:00 a.m., e.s.t., on Thursday, February 15, 1979, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW. All parties will be given an opportunity to be present, to produce information, and to be heard at such hearing. Requests to appear at the public hearing should be received in writing in the office of the Secretary to the Commission not later than Friday, February 9, 1979.

Written statements.—Interested parties may submit statements in writing in lieu of, or in addition to, appearance at the public hearing. A signed original and nineteen true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received no later than Friday, February 9, 1979.

By order of the Commission.

Issued: February 8, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-4769 Filed 2-12-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

NORTHERN NINTH CIRCUIT PANEL OF THE U.S. CIRCUIT JUDGE NOMINATING COMMISSION

Meeting

The Northern Ninth Circuit Panel of the U.S. Circuit Judge Nominating Commission will have its second meeting commencing March 1 at 9:30 a.m., and if necessary, will be carried over to March 2 and 3. This meeting will be held in the Conference Room of Souther, Spaulding, Kinsey, Williamson & Schwabe, Twelfth Floor, Standard Plaza, 1100 S.W. Sixth Avenue, Portland, Oregon.

This meeting will be closed to the public pursuant to Pub. L. 92-463, Section 10(D) as amended. (CF. 5 U.S.C. 552b (c)(6).)

JOSEPH A. SANCHES,
Advisory Committee Management Officer.

FEBRUARY 7, 1979.

[FR Doc. 79-4705 Filed 2-12-79; 8:45 am]

[4401-01-M]

Law Enforcement Assistance Administration

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Solicitation

The National Institute of Law Enforcement and Criminal Justice plans to initiate a program of research, the ultimate goal of which is the rational and consistent prioritization of prosecutors' information requirements and police departments' investigative procedures in order both to facilitate informed and just prosecution decisions and to maximize convictable arrests. The purpose of this solicitation is to invite researchers with a particular interest in this topic area to compete for the initial research grant. The intent of this grant is to conceptualize the problem of prosecutorial information requirements for various types of criminal cases, and police acquisition of this information in order to allow a systematic empirical investigation of the subject. Also anticipated within this effort is limited collection and/or analysis of relevant data.

The solicitation asks for the submission of preliminary proposals rather than formal grant applications. Formal proposals will be requested following a peer review process in accordance with the criteria set forth in the solicitation. In order to be considered, all papers must be postmarked no later than March 19, 1979. The grant is planned for award in May 1979 with funding support not to exceed

$150,000 and a grant period of 18 months in duration.

Further information and copies of the solicitation can be obtained by contacting: William E. Saulsbury or David J. Farmer, Office of Research Programs, NILECJ, 633 Indiana Avenue, N.W. Washington, D.C. 20531 301-492-9110.

BLAIR G. EWING,
Acting Director, National Institute of Law Enforcement and Criminal Justice.

[FR Doc. 79-4656 Filed 2-12-79; 8:45 am]

[4410-18-M]

NATIONAL MINORITY ADVISORY COUNCIL ON CRIMINAL JUSTICE

Meeting

This is to provide notice of meeting of the National Minority Advisory Council on Criminal Justice (NMACCJ).

The National Minority Advisory Council will hold its regular quarterly meeting and work session on February 23 through 26, 1979. The meeting will be held at the Sheraton Silver Spring, 8727 Colesville Road, Silver Spring, Maryland 20910. The meeting is scheduled to run from 9:00 a.m. until 6:00 p.m. on each day. The four sessions will center on review of the Council's final report on the national needs assessment of minorities and their relationship with the criminal justice system. The meeting is open to the public.

Anyone wishing additional information should contact Lewis Taylor, Project Monitor, 633 Indiana Ave., N.W., Washington, D.C. 20531. Telephone number (202) 633-2215.

LEWIS W. TAYLOR,
Project Monitor, National Minority Advisory Council on Criminal Justice.

[FR Doc. 79-4657 Filed 2-12-79; 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-78-134-C]

YOUGHIOGHENY & OHIO COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

The Youghiogheny and Ohio Coal Company, 6 North 4th Street, Martins Ferry, Ohio 43935, has filed a petition to modify the application of 30 CFR 75.1100 (fire protection) to its Nelms Mine in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. This petition concerns the slope belt waterline at the petitioner's mine.

2. Due to freezing conditions during the winter which could render the waterline useless for firefighting and to the tendency of standing water to corrode the waterline, the petitioner proposes to establish the following dry-line system:

a. Water for the system will be fed from a 10,000 gallon tank through a two-inch pipe to firehose outlets at 300-foot intervals along the belt.

b. A by-pass system with a manual valve will be installed at the electric pump so that the water line can be charged during the emergency.

c. All employees who work in the vicinity of the hoist or supply house will be instructed in the location and operation of the manual valve. A hoistman will be in the building at all times when employees are underground.

d. An automatic sensor system will be inspected weekly and a functional test of the complete system will be made at least once annually.

3. The petitioner states that this alternative will achieve no less protection for miners than that provided by the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before March 15, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: February 1, 1979.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-4714 Filed 2-12-79; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health will meet on March 2, 1979, at the New Department of Labor Building, Third Street and Constitution Avenue NW., Washington, D.C. The Committee will meet in room N-4437. The meeting will begin at 9:30 a.m. The public is invited to attend.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 (Pub. L. 91-596) to advise the Secretary of Labor and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act.

Following the swearing in of the new members, the Committee will hear reports on the recent activities of OSHA and NIOSH from the respective heads of these agencies, Dr. Eula Bingham and Dr. Anthony Robbins. Benjamin Mintz, Associate Solicitor for Occupational Safety and Health, will present an update of legal developments affecting OSHA. After these reports, the Committee will discuss and outline plans for the coming year.

FOR ADDITIONAL INFORMATION CONTACT:

Clarence Page, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3635, Third Street and Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-8024.

Official records of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C., this 9th day of February 1979.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 79-4843 Filed 2-12-79; 8:45 am]

[4510-29-M]

Office of Pension and Welfare Benefit Programs

PROPOSED EXEMPTIONS FOR CERTAIN TRANSACTIONS INVOLVING SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST (APPLICATION NO. D-1219)

AGENCY: Department of Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of two proposed exemptions from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemptions were requested in an application filed on behalf of Thomas L. Karsten Associates (Karsten) for transactions involving the Southern Nevada Culinary and Bartenders Pension Trust (the Pension Trust). The proposed exemptions, if granted, would affect participants and beneficiaries of the Pension Trust, their employers, the Pension Trust's investment managers, and other per-

sons participating in the described transactions.

DATES: Written comments must be received by the Department of Labor on or before March 15, 1979.

ADDRESS: All written comments (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-1219. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Robert R. Bitticks of the Department of Labor (202) 523-8620. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed exemptions from the restrictions of sections 406(a) and 407(a) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemptions were requested in an application filed on behalf of Karsten, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. The applications were filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978 (44 FR 1065, January 3, 1979), section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

BACKGROUND

Karsten has made representations applicable to each proposed exemption which are summarized below. Interested persons are referred to the application for the complete representations of Karsten.

On June 30, 1978, the Department and the Internal Revenue Service granted exemptions to permit the Upper Avenue Bank (the Bank) as investment manager of the Pension Trust to engage in transactions with certain parties in interest and disqualified persons. The Bank has given notice of its desire to resign its position as investment manager as soon as possible, and the trustees of the Pension Trust have designated Karsten as the successor investment manager with respect to real estate related assets. The proposed exemptions are identical to the exemptions granted to the Bank.

The Pension Trust was established in 1971 to provide pension benefits to members of the Culinary Workers Union Local 226 and the Bartenders Union Local 165. The Pension Trust is maintained jointly by these two unions and various employers located in southern Nevada. As of January 27, 1978, there were 31,553 participants in the Pension Trust and 253 employers of participants. As of December 31, 1976 the Pension Trust had assets of approximately $41,500,000.

The Pension Trust has entered into various financial transactions with entities owned by Mr. Morris A. Shenker, including Sierra Charter Corporation ("Sierra") and Murrieta Hot Springs ("Murrieta"). Mr. Shenker, through various entities, owns more than 10 percent of, and is an officer of, the Dunes Hotel in Las Vegas, Nevada. The Dunes Hotel is a contributing employer with respect to the Pension Trust. Among the transactions entered into by the Pension Trust with entities owned by Mr. Shenker are loans made to Murrieta and Sierra, repayment of which is guaranteed by Mr. Shenker. Payments on these loans are not current. As of January 30, 1978, Murrieta and Sierra owed the Pension Trust, in the aggregate, approximately $28 million. The loans were made to finance real estate development activities of Sierra and Murrieta and are primarily secured by real estate and real estate related assets.

On March 30, 1977, the Secretary of Labor commenced litigation—*Marshall, et al.* v. *Schmoutey, et al.*, No. CV-LV-77-47-RDF (D. Nev.)—against certain past and present trustees of the Pension Trust, Mr. Shenker, Sierra, Murrieta, and others, alleging that the Pension Trust's financial involvement with Sierra, Murrieta, Mr. Shenker and others violated certain fiduciary responsibility and prohibited transaction provisions of the Act. Pursuant to a stipulation entered into on August 30, 1977 by the parties to this litigation, the Bank was appointed investment manager of the Pension Trust to take control of all of the Pension Trust's real estate and real estate related assets (including all loans secured by real estate) and certain cash and cash equivalent assets. The Bank is presently acting as investment manager pursuant to the stipulation and the Asset Management Plan approved by the United States District Court, District of Nevada, where the above litigation is pending.

Karsten and its affiliate, the Karsten Real Estate Group (Karsten Group), both located at 10960 Wilshire Boulevard, Los Angeles, California 90024, have been engaged in real estate development and related asset management for the past ten years. Karsten is registered as an investment adviser pursuant to Section 203 of the Investment Advisers Act of 1940.

Karsten has represented that Karsten and Karsten Group have developed a number of real estate projects for some of the largest businesses in the country, have consulted on a broad range of real estate problems and strategies, and have become one of the most active enterprises in the United States in the workout of distressed or problem real estate. Their clients have included banks and other financial institutions, for which they have taken over assets under distressed circumstances, applied their management, development and financing skills, and disposed of the assets at advantageous market prices. Prior to June 15, 1978 at which time Karsten began to provide services to the Pension Trust, neither Karsten nor Karsten Group, nor any officer, director or 5% or more shareholder of either, had any affiliation or relationship with the Pension Trust or any of the defendants in the litigation. In addition, neither Karsten nor Karsten Group nor any officer, director or 5% or more shareholder has any financial interest in any business entity which, based on reasonable inquiry, is known to them to have any affiliation or relationship with the Pension Trust or any of the defendants in the litigation.

The contract between Karsten and the Trustees of the Pension Trust for Karsten's employment as investment manager provides that Karsten's appointment will not become effective unless and until the proposed exemptions are granted. The contract further provides that as investment manager Karsten will have the power to manage, acquire, or dispose of any of the Pension Trust's real estate related assets and a working fund of cash or cash equivalents, and to take whatever action with respect to such assets as the Pension Trust's trustees would have the power or authority to take had an investment manager not been appointed. Karsten will have no authority to delegate its fiduciary responsibilities with respect to the Pension Trust assets under its management. Karsten will have the power to make claims and demands on behalf of the Pension Trust, to foreclose on its security interests, to deny claims against the Pension Trust, to defend against actions in law or equity against the Pension Trust, and to compromise and settle claims for and against the Pension Trust. However, Karsten will

not be authorized to pursue claims the Pension Trust may have against present or former trustees of the Pension Trust, and of its agents, consultants, or representatives, or the Bank. Karsten will be required to act in accordance with the Asset Management Plan, and will be subject to the terms of a new stipulation which will be entered into by the parties to the litigation, and which will be similar to the August 30, 1977, stipulation. Under the terms of the new stipulation, however, Karsten will manage only the Pension Trust's real estate related assets and a cash working fund. The trustees have retained and will continue to retain an additional investment manager to manage the Pension Trust's non-real estate related assets which have been under the management of the Bank.[1]

Karsten will be required, under the new stipulation, within 120 days of the formal commencement of its duties as investment manager, to assess the Asset Management Plan in light of current developments and seek approval for any new or materially revised aspects of such Plan which Karsten may deem prudent and necessary.

The terms of the contract between Karsten and the trustees of the Pension Trust provide that Karsten is to be paid an annual fee of $450,000 (payable quarterly) and, from November 7, 1978 until the effective date of its appointment as investment manager, a fee of $20,833.33 per month, prorated on the basis of a 30 day month. Karsten is also to be reimbursed for reasonable out-of-pocket costs and expenses. Karsten may retain the experts it believes are reasonably necessary for the proper fulfillment of its duties, and Karsten is to be reimbursed at least monthly for all reasonable and customary fees and expenses of such experts. The fee arrangements for such experts and professionals are to be subject to the approval of the trustees. If no objection is made within a ten-day period after receipt of a request for approval, the trustees will be deemed to have confirmed such arrangement.

During the pendency of the aforementioned litigation, Karsten may be removed as investment manager only for cause, either by agreement of all parties to the litigation or by the court on noticed motion of such a party. Karsten's appointment as investment manager is effective during the pendency of the aforementioned litigation, subject only to the foregoing removal procedure and to Karsten's right to resign.

Karsten will report to the Department certain transactions undertaken pursuant to the proposed exemptions. The Department will review these reports and, if circumstances warrant, take appropriate action to protect the interests of the Pension Trust and its participants and beneficiaries. For example, see section 9.02 and 9.03 of Rev. Proc. 75-26 and ERISA Procedure 75-1.

[1]Under the August 30, 1977 stipulation, the Bank was, with a minor exception, appointed investment manager of all the Pension Trust's assets.

PROPOSED EXEMPTIONS

The application contains certain representations which are specifically applicable to each of the proposed exemptions which are summarized below. Each part set forth below contains a summary of the specific representations which are applicable to the particular proposed exemption followed by the proposed exemption.

PART I.—CONTINUATION OR ADJUSTMENT OF EXISTING TRANSACTIONS

Summary of Representations. The existing transactions consist of a number of loans to corporations (including Murrieta and Sierra) controlled by Mr. Shenker, who is alleged to be a party in interest and disqualified person with respect to the Pension Trust. Some of these loans are inadequately secured or are encumbered by prior or subordinate liens. Several of the loans are in default. A number of the loans have been guaranteed by Mr. Shenker.

The principal objective of Karsten, in managing these real estate related assets, is to obtain the best possible financial results for the Pension Trust consistent with prudent investment management. To attain that objective, Karsten may decide that it is necessary to hold property for an extended period of time, to invest additional capital in such property or to modify the terms of an existing arrangement. Because these transactions would be with or involve Mr. Shenker or entities controlled by Mr. Shenker, if an administrative exemption were not granted to permit Karsten to engage in such transactions, Karsten believes that it would not be able to negotiate modifications or adjustments which would be in the best interests of plan participants and beneficiaries. All such modifications or adjustments would be made under the terms of the Asset Management Plan as approved by the U.S. District Court (D. Nev.).

Proposed Exemption. Based on the application described herein, the Department has under consideration the granting of an exemption, to be effective from the date of grant, under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1, so that the taxes imposed by sections 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code and the restrictions of section 406(a) and 407(a) of the Act shall not apply to:

(1) The continuation of any loan, lease, agreement, or other arrangement, or the continued holding of any employer security or real property, which is or relates to a plan asset of the Pension Trust; or

(2) The reconfirmation of deeds, or adjustment of the terms of any loan, lease, agreement, assignment or other arrangement (and all acts necessary and proper to the carrying out of such arrangment in accordance with its terms as adjusted), which is or relates to a plan asset of the Pension Trust, with any person who was on August 30, 1977, a party to such loan or other arrangement;

Provided, That any such continuation, reconfirmation or adjustment is made pursuant to a court order or pursuant to a written agreement executed or authorized by Karsten on behalf of the Pension Trust under the terms of the Asset Management Plan and during the pendency of the aforementioned litigation.

If granted, the proposed exemption would apply to the following persons:

(A) Karsten acting as investment manager of the Pension Trust's real estate related assets, to the extent that Karsten causes the Pension Trust to engage in any continuation, adjustment or reconfirmation described above; and

(B) Any party in interest or disqualified person involved in the transaction:

Provided, That

(i) Karsten determines that such continuation reconfirmation or adjustment is in the interests of the Pension Trust and its participants and beneficiaries and protective of the rights of the participants and beneficiaries of the Pension Trust;

(ii) Karsten communicates in writing to the Department within 30 days after making such continuation, reconfirmation or adjustment, a detailed description of the transaction and detailed explanation of why the transaction is in the interest of the Pension Trust and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Pension Trust; and

(iii) Any continuation or adjustment is no less favorable to the Pension Trust than the terms that would be obtained in an arm's-length transaction with an unrelated party.

PART II—TRANSACTIONS WITH CERTAIN PARTIES IN INTEREST AND DISQUALIFIED PERSONS

Summary of Representations. As of January 27, 1978, there were 31,553

participants in the Pension Trust and 253 employers of participants. The gambling resort industry is one of the largest employers in southern Nevada. As of December 31, 1977, 10 entities provided services to the Pension Trust. Because of the precarious status of many of the existing loans of the Pension Trust, time is critical to the execution of transactions under the terms of the Asset Management Plan. In the absence of the type of exemption proposed herein, Karsten would be unable to deal with a large number of persons in the southern Nevada area (many of whom are parties in interest or disqualified persons with respect to the Pension Trust) without first seeking exemptions on a transaction-by-transaction basis, subject to the notice and waiting periods attendant to the exemption process required by statute. Such a process of seeking individual transaction exemptions would, in the view of Karsten, effectively deprive the Pension Trust of advantageous investment opportunities essential to an efficient and favorable working out of the troubled loans which are the subject of the Asset Management Plan.

Under the terms of the proposed exemption, Karsten may cause the Pension Trust to engage in a transaction with (1) a service provider with respect to the Pension Trust; (2) a contributing employer whose contributions to the Pension Trust which were required for the preceding plan year did not exceed five percent of the total employer contributions to the Pension Trust for that year; or (3) any other person who is a party in interest or disqualified person solely by virtue of a relationship to such service provider or contributing employer.[2] The proposed exemption, however, would not be available where Karsten causes the Pension Trust to engage in a transaction with a trustee, administrator or investment manager with respect to the Pension Trust, or any person who is a party in interest or disqualified person by virtue of a relationship to such trustee, administrator or investment manager. Karsten must submit to the Department a written report within 30 days after consummation of the transaction if Karsten actually knows that the transaction involves a person who is a party in interest or disqualified person as described above. The report must include a detailed description of the transaction, the identification of the party in interest or disqualified person and its relationship to the Pension Trust and a detailed explanation of why the transaction is in the interest of the Pension Trust and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Pension Trust.

Proposed Exemption. Based on the facts and representations set forth in the application, the Department has under consideration the granting of an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of section 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to transactions or arrangements between or including the Pension Trust and any of the following persons, entered into by Karsten on behalf of the Pension Trust under the Asset Management Plan and during the pendency of the aforementioned litigation, provided that the transactions or arrangements are entered into in connection with an attempt to realize value from loans and other transactions which had been entered into by the Pension Trust prior to the time that Karsten was appointed investment manager:

(1) A service provider with respect to the Pension Trust and any other person which is a party in interest or disqualified person solely by virtue of a relationship to such service provider (except a trustee, administrator, or investment manager with respect to the Pension Trust, and any other person which is a party in interest or disqualified person by virtue of a relationship to such trustee, administrator or investment manager);

(2) An employer (treating employers who are of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563 (a)(4) and (e)(3)(C) of the Code as one employer) whose contributions which were required for the preceding plan year did not exceed five percent of the total employer contributions paid to or under the Pension Trust for that year; or

(3) Any other person which is a party in interest or disqualified person solely by virtue of a relationship to such employer.

If granted, the proposed exemption would be subject to the following conditions:

(A) The transaction is no less favorable to the Pension Trust than the terms that would be obtained in an arm's-length transaction with an unrelated party;

(B) Where the transaction involves a person described in (1) through (3) above whom Karsten actually knows at the time of the transaction to be a party in interest or disqualified person with respect to the Pension Trust, Karsten shall have determined prior to causing the Pension Trust to engage in the transaction that the transaction is in the interests of the Pension Trust and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Pension Trust; and

(C) Karsten communicates in writing to the Department within 30 days after causing the Pension Trust to engage in a transaction described in (B) above, a detailed description of the transaction, the identity of the party in interest or disqualified person and its relationship to the Pension Trust, and a detailed explanation why the transaction is in the interest of the Pension Trust and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Pension Trust.

NOTICE TO INTERESTED PERSONS

Notice of the pending exemptions as published in the FEDERAL REGISTER will be sent by certified mail within 3 days after publication in the FEDERAL REGISTER to each current trustee and to each employer association and employee organization which is a signatory to the Trust Agreement creating the Pension Trust.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemptions, if granted, will not extend to transactions prohibited under section 406(b) of the Act, and section 4975(c)(1)(E) and (c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the ex-

[2] A person is a party in interest or disqualified person by virtue of a relationship if the relationship is described in section 3(14) (E), (F), (G), (H), or (I) of the Act or section 4975(e)(2) (E), (F), (G), (H) or (I) of the Code.

emption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) The proposed exemptions, if granted, will be subject to the express conditions that the material facts and representations are true and complete.

WRITTEN COMMENTS

All interested persons are invited to submit written comments on the proposed exemption to the address and within the time period set forth above.

All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Signed at Washington, D.C., this 7th day of February 1979.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, United States Department of Labor.

[FR Doc. 79-4701 Filed 2-8-79; 3:01 pm]

[4510-28-M]

Office of the Secretary

[TA-W-4452]

ATLANTIC STEEL CASTINGS, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4452: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1978 in response to a worker petition received on November 27, 1978 which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers producing steel castings of various shapes and sizes at Atlantic Steel Castings, Inc., Chester Pennsylvania.

The Notice of Investigation was published in the FEDERAL REGISTER on December 8, 1978 (43 FR 57692). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Atlantic Steel Castings, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of steel castings constitute less than 2 percent of domestic production.

The Department conducted a survey of the principal customers of Atlantic Steel Castings, Inc. One customer that imported indicated that its demand for steel castings has been declining and will continue to decline, although it has increased purchases of imported steel castings. This increase was related to the fact that Atlantic could not manufactuer large size castings (20,000 lbs. and over).

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that all workers of Atlantic Steel Castings, Inc., Chester, Pennsylvania, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of February 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-4723 Filed 2-12-79; 8:45 am]

[4510-28-M]

[TA-W-4463]

BARRINGER KNITTING MILLS, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4463: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 6, 1978 in response to a worker petition received on November 20, 1978 which was filed by the Knitgoods Union, International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' sweaters and knit tops at the Philadelphia, Pennsylvania plant of Barringer Knitting Mills, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59165). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Barringer Knitting Mills, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's sweaters increased from 1975 to 1976. In 1977, imports of sweaters increased 9.0 percent over the average level of imports for the years 1973 through 1976. The ratio of imports of sweaters to domestic production in 1977 was above the import to domestic production ratio recorded in each year in the 1973 to 1975 time period.

U.S. imports of women's, misses' and children's blouses and shirts increased from 1976 to 1977. Imports increased in the first three quarters of 1978 compared to the first three quarters of 1977.

A Departmental survey of customers of Barringer Knitting Mills, Incorporated revealed that several customers increased their purchases of imported women's sweaters and decreased their purchases from Barringer during comparable periods in 1978 versus 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' sweaters and knit tops produced at the Philadelphia, Pennsylvania plant of Barringer Knitting Mills, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of that Act, I make the following certification:

All workers of the Philadelphia, Pennsylvania plant of Barringer Knitting Mills, Incorporated who became totally or partially separated from employment on or after Sep-

tember 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of February 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-4722 Filed 2-12-79; 8:45 am]

[4510-28-M]

[TA-W-4454]

FIESTA FASHIONS, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4454: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1978 in response to a worker petition received on November 27, 1978 which was filed on behalf of workers and former workers producing ladies', misses', children's, juniors', and girls' coats at Fiesta Fashions, Inc., Farmingdale, New York. The investigation revealed that the company also maintained a sales office in New York, New York and that the primary product was ladies' coats.

The Notice of Investigation was published in the FEDERAL REGISTER on December 8, 1978 (43 FR 57692-93). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Fiesta Fashions, Inc., its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysis and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased both absolutely and relative to domestic production in 1977 compared to 1976. Imports declined slightly, in absolute terms, in the first three quarters of 1978 compared to the like period of 1977.

The Department conducted a survey of the major customers who purchased coats from Fiesta Fashions, Inc., in 1977 and 1978. The survey revealed that several customers, accounting for a significant percent of Fiesta's decline in sales, reduced purchases of ladies' coats from Fiesta and increased purchases of imported ladies' coats for the January-September period of 1978 as compared to the similar period of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the ladies', misses', children's, juniors', and girls' coats produced at Fiesta Fashions, Inc., Farmingdale, New York and the New York, New York sales office contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Fiesta Fashions, Inc., Farmingdale, New York and the New York, New York sales office who became totally or partially separated from employment on or after February 19, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of February 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-4721 Filed 2-12-79; 8:45 am]

[4510-28-M]

[TA-W-4260]

IMPERIAL READING CORP.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4260: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 16, 1978 in response to a worker petition received on October 12, 1978 which was filed on behalf of workers and former workers engaged in employment related to the production of boys' jeans at the Piney Flats, Tennessee plant of the Imperial Reading Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50269). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Imperial Reading Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of boys' cotton and manmade jeans and dungarees increased absolutely form 1976 to 1977 and continued to increase in the first three quarters of 1978 when compared to the first three quarters of 1977. The ratio of imports to the domestic production of boys' jeans and dungarees also increased from 1976 to 1977.

The Office of Trade Adjustment Assistance conducted a survey of some of the customers of boys' jeans of the Imperial Reading Corporation. Customers accounting for a significant percent of the company's decline in sales in the first ten months of 1978 compared to the like 1977 period reported increased purchases of imported boys' jeans.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the boys' jeans produced at the Piney Flats, Tennessee plant of the Imperial Reading Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Piney Flats, Tennessee plant of the Imperial Reading Corporation who became totally or partially separated from employment on or after October 2, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of February 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-4720 Filed 2-12-79; 8:45 am]

[4510-28-M]

[TA-W-4493]

MEDIAS, INCORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4493: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 8, 1978, in response, to a worker petition received on December

4, 1978, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's and boys' socks at Medias, Incorporated, Bayamon, Puerto Rico.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59179-80). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Medias, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to made an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increase of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of all hosiery, except pantyhose, a category which includes men's and boys' socks decreased absolutely and relative to domestic production in 1977 compared to 1976 and increased absolutely in the first nine months of 1978 compared to the same period of 1977. The ratio of imports to domestic production was less than 1.0 percent in each year from 1973 through 1977.

Medias, Incorporated sold all of its production to one distributing firm. This distributor purchased no imported men's or boys' socks in 1977 or 1978.

CONCLUSION

After careful review, I determine that all workers of Medias, Incorporated, Bayamon, Puerto Rico are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of February 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-4719 Filed 2-12-79; 8:45 am]

[3510-24-M]

[TA-W-4147]

NIPAK, INC.

Affirmative Determination Regarding Application for Reconsideration

On January 12, 1979, the Oil, Chemical and Atomic Workers' International Unior requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of Nipak, Inc., Pryor, Oklahoma. This determination was published in the FEDERAL REGISTER on January 2, 1979 (44 FR 122).

The petitioning union raises one basic issue in the application; namely, that the Department of Labor should have conducted a survey of a cross section of Nipak's customers instead of a survey of major customers. The union alleges that had this been done workers at Nipak, Inc., Pryor, Oklahoma, would have met the test that increased imports contributed importantly to worker separations and sales or production declines.

CONCLUSION

After review of the application, I conclude that this claim of the petitioning union is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 7th day of February 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-4718 Filed 2-12-79; 8:45 am]

[4510-28-M]

[TA-W-4373]

ROCKWELL-DRAPER DIVISION, ROCKWELL INTERNATIONAL, SPARTANBURG, S.C.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4373: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 6, 1978 which was filed on behalf of workers and former workers producing textile machinery, machinery repair parts and textile accessories at Rockwell-Draper Division, Spartanburg, South Carolina. The investigation revealed that the plant primarily produces textile machinery repair parts.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Rockwell-Draper Division, Rockwell International, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of all power looms decreased absolutely from 1976 to 1977 from 4,592 units to 3,643 units. The imports to production ratio increased from 133.4 percent to 206.2 percent.

For the first half of 1978 compared to the first half of 1977, imports of looms increased from 2,065 to 2,252 units. The imports to production ratio increased from 168.4 percent to 385.0 percent.

Imports of aluminum cast parts similar to those purchased at the Spartanburg plant, from a Draper division plant in Ireland increased substantially from 1976 to 1977. Though decreasing slightly in 1978, imports were still significantly higher than the 1976 level.

Further, loom parts production from the Spartanburg plant are integrated into the production of new looms at the Hopedale, Massachusetts plant, which is the only Draper plant that assembles finished looms. The Hopedale, Massachusetts plant was certified by the Department in case TA-W-2179 on August 19, 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with repair parts for textile machinery produced at Rockwell-Draper Division, Spartanburg, South Carolina contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Rockwell-Draper Division, Rockwell International, Spartanburg, South Carolina who became totally or partially separated from employment on or after November 2, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-4717 Filed 2-12-79; 8:45 am]

[4510-28-M]

[TA-W-4511]

SEWARD LUGGAGE CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4511: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 12, 1978 in response to a worker petition received on December 11, 1978 which was filed on behalf of workers and former workers producing luggage and trunks at the Seward Luggage Company, Petersburg, Virginia. The investigation revealed that the petition was filed only on behalf of workers engaged in the production of luggage at plant #2 of Seward Luggage Company.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59180-59181). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Seward Luggage Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of luggage increased both absolutely and relative to domestic production in 1977 from 1976 and in January-September 1978 compared to the same period in 1977.

Imports of luggage by Seward Luggage increased both absolutely and relative to sales of luggage produced by the Petersburg plant in 1978 from 1977. Increased reliance on imported luggage by Seward led to decreased production and employment at plant #2 of Seward Luggage Company.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the luggage produced at plant #2 of Seward Luggage Company, Petersburg, Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of plant #2, Seward Luggage Company, Petersburg, Virginia who became totally or partially separated from employment on or after March 5, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-4716 Filed 2-12-79; 8:45 am]

[4510-28-M]

[TA-W-4523]

WEISS SHIRT CO., INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4523: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1978 in response to a worker petition received on December 4, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing women's shirts and blouses at the Lebanon, Pennsylvania plant of Weiss Shirt Company, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on December 26, 1978 (43 FR 60243). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Weiss Shirt Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977 and increased from 24,036 thousand dozen in the first three quarters of 1977 to 28,505 thousand dozen in the same period in 1978.

A Labor Department survey revealed that a major customer of Weiss Shirt substantially increased purchases of imported women's shirts and blouses in 1977 compared to 1976 and also in the first three quarters of 1978 compared to the same period in 1977. Purchases by this major customer of women's shirts and blouses and blouses from Weiss Shirt decreased sharply in 1977 compare to 1976 and in 1978 compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's shirts and blouses produced at the Lebanon, Pennsylvania plant of the Weiss Shirt Company, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Lebanon, Pennsylvania plant of Weiss Shirt Company, Incorporated who became totally or partially separated from employment on or after November 13, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 6th day of February 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-4715 Filed 2-12-79; 8:45 am]

[6325-01-M]

MERIT SYSTEMS PROTECTION BOARD

APPEALS PROCESSED

Announcement

Pursuant to 5 U.S.C. § 7701(i), the Merit Systems Protection Board hereby announces that all appeals processed by it pursuant to 5 U.S.C. § 7701 or 5 U.S.C. § 7702 will be decided within 120 days of the filing of the appeal. In the event that an appeal filed under 5 U.S.C. § 7701 cannot be decided within 120 days and the expected delay will exceed 30 days, a new date for completion of the appeal will be publicly announced by the Board field office having jurisdiction over the appeal.

RUTH T. PROKOP,
Chair, Merit Systems Protection Board.

FEBRUARY 9, 1979.

[FR Doc. 79-4851 Filed 2-13-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON THE MEDICAL USES OF ISOTOPES

Nominations For New Members

The Nuclear Regulatory Commission (NRC) is anticipating three vacancies on its Advisory Committee on the Medical Uses of Isotopes (ACMUI) and is inviting nominations from members of the medical community and from other interested groups or individuals.

The purpose and function of the ACMUI is to advise the NRC staff on problems or questions that arise in licensing the use of radioactive material for human diagnosis and therapy. Duties and responsibilities include evaluating the training and experience requirements for physicians who request authorization to use radioactive materials for medical purposes; providing guidance and comments concerning changes in NRC rules, regulations and guides concerning medical uses; and evaluating certain nonroutine uses of radioactive materials for human diagnosis and therapy. Additional details regarding the duties and functions of the committee and its members can be obtained by telephoning Mrs. Patricia C. Vacca at (301) 427-4232.

The eight member ACMUI consists of two physician specialists in Therapeutic Radiology, one physician a specialist in Nuclear Medicine with a background in Pathology, two physician specialists in Nuclear Medicine with a background in Radiology, two physician specialists in Nuclear Medicine with a background in Internal Medicine, and a specialist in Medical Physics. It is intended that this balance of medical specialists remain constant.

In Accordance with established procedures, the three committee members with the greatest length of service will be retired, creating vacancies for two specialists in Nuclear Medicine who have backgrounds in Radiology and specialist in Nuclear Medicine who has a background in Internal Medicine.

Nominations must include a resume describing the educational and professional qualifications of the nominee and his or her current address. Candidates must be U.S. citizens and be able to devote approximately 150 hours per year to committee business.

All qualified nominees will receive full consideration. Appointments are for four year terms. Compensation for services of the members is provided in accordance with government policies.

Nominations received by March 15, 1979 will be considered for the forthcoming vacancies. Nominations received after that date will be considered for future vacancies as they develop. Nominations should be sent to the:

Secretary of the Commission, ATTN: Advisory Committee Management, Officer, Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Washington, D.C. this 7th day of February 1979.

For the Nuclear Regulatory Commission.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-4590 Filed 2-12-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-348A and 50-364A]

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alabama Power Co. (Joseph M. Farley Nuclear Plant Units 1 and 2); Order

FEBRUARY 5, 1979.

The NRC staff has requested that we postpone the oral argument in this antitrust proceeding for approximately one week. No party opposes the request. For good cause shown, the argument is *rescheduled for Thursday, March 8, 1979,* the date agreed upon by the parties, at *9:30 a.m. in the Commission's Hearing Room, 5th floor, 4350 East-West Highway, Bethesda, Maryland.* In all other respects the argument will be governed by the terms of our January 23, 1979 order.

It is so ordered.

For the Appeal Board.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc. 79-4591 Filed 2-12-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10588]

AMERICAN LEADERS FUND, INC., EMPIRE FUND, INC. AND FOURTH EMPIRE FUND, INC.

Notice of Filing of Application Pursuant to Section 17(b) of the Act for Order Exempting Proposed Transaction From the Provisions of Section 17(a) of the Act.

FEBRUARY 9, 1979.

NOTICE IS HEREBY GIVEN that American Leaders Fund, Inc. ("American Leaders"), Empire Fund, Inc. ("Empire"), and Fourth Empire Fund, Inc. ("Fourth Empire") (hereinafter American Leaders, Empire, and Fourth Empire are collectively referred to as "Applicants"), registered under the Investment Company Act of 1940 (the "Act") as open-end, diversified, management investment companies, filed an application on July 7, 1978, and an amendment thereto on December 4, 1978, requesting an order pursuant to Section 17(b) of the Act exempting the proposed statutory merger of Empire and Fourth Empire into American Leaders from the provisions of Section 17(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that American Leaders is engaged in a continuous offering of its shares to the public, and that Empire and Fourth Empire, created as "exchange type" or "swap" funds, commenced and completed public offerings of their shares in exchange for stock or other securities of various corporations shortly after their organization. Applicants represent that as of October 31, 1978, the net assets of American Leaders, Empire, and Fourth Empire were $14,684,628, $20,965,979 and $18,489,689, respectively, and that American Leaders, Empire and Fourth Empire had 661, 662, and 1,665 shareholders, respectively.

Applicants represent that each of their Boards of Directors has decided to recommend the proposed merger to their shareholders. Applicants state that American Leaders, Empire, and Fourth Empire have entered into an Agreement of Merger, under which Empire and Fourth Empire shall be merged into American Leaders in accordance with the laws of the State of Maryland, and that on the date the merger becomes effective (the "Effective Date"), the outstanding shares of capital stock of Empire and Fourth Empire shall be converted into shares of American Leaders based upon the relative net asset values of the Applicants. Shares of capital stock of Empire and Fourth Empire owned by each shareholder on the Effecitve Date will be converted into such number of shares of American Leaders as shall have an aggregate net asset value (as of the last day on which the New York Stock Exchange is open for unrestricted trading prior to the Effective Date) (the "Valuation Date") equal to such shareholder's pro rata interest in the value of the net assets of shares held in Empire and Fourth Empire respectively. Applicants state that under ordinary circumstances, no more than two calendar days could pass between the Valuation Date and the Effective Date, and assure that such period shall not exceed a maximum of three days. Applicants state that as a result of the merger, the sep-

arate existence of Empire and Fourth Empire shall cease.

Applicants state that the investment advisers of American Leaders, Empire, and Fourth Empire are Federated Asset Management Corp. ("Asset Management"), F.E.F. Research Corp., and Empire IV Research Corp., respectively; that each of those investment advisers is a wholly-owned subsidiary of Federated Investors, Inc. ("Investors"); that Federated Research Corp. ("Research"), another wholly-owned subsidiary of Investors, currently acts as sub-investment adviser to each Applicant; and that the investment advisory contracts between each Applicant and its investment adviser, and the sub-advisory agreements between each of the investment advisers and Research have terms and conditions which are identical in all material respect. According to the application, the Board of Directors of American Leaders has determined to propose to shareholders the ratification of a new investment advisory contract with Asset Management which contract would consolidate into Asset Management the advisory activities now performed by Research.

Applicants state that each of their investment policies and investment restrictions are identical in all material respects; that the investment objective of both Empire and Fourth Empire is long-term growth of capital and of income; and that the investment objective of American Leaders is growth of capital and of income. According to the application, Asset Management recommends securities for American Leaders' portfolio from secureities of the 100 companies on the "Leader's List", a list of 100 "blue chip" companies selected by Research. Applicants represent that American Leaders as the surviving corporation of the merger, does not contemplate selling, except in the ordinary course of business, any portfolio securities it will receive from Empire and Fourth Empire in the proposed merger because all of Empire's and Fourth Empire's portfolio securities are on the Leader's List.

Applicants state that they each distribute to their shareholders substantially all of their net investment income; that American Leaders distributes net taxable long-term capital gains to its shareholders; and that Empire and Fourth Empire retain a portion of net taxable long-term capital gains, paying the applicable federal tax thereon. Applicants contemplate that, if Empire and Fourth Empire are merged into American Leaders, the policies of American Leaders with respect to distribution of net income and capital gains would be followed. Applicants believe that this change in policy for Empire and Fourth Empire, with respect to distributions of long-term capital gains, will have no material adverse effect upon their shareholders.

According to the application, Applicants will make the following distributions and accruals prior to the Effective Date, which they believe will put the shareholders of each Applicant on a more equal basis upon which to effect the exchange of shares: (1) each Applicant will distribute to its shareholders a dividend consisting of substantially all of its then undistrubuted net taxable investment income and net taxable short-term capital gains (if any); (2) American Leaders will distribute to its shareholders a long-term capital gains distribution, if available, substantially equal to its long-term capital gains realized, but not previously distributed, since March 1, 1978, the start of its fiscal year; and (3) the federal income tax payable with respect to the long-term capital gains realized by Empire and Fourth Empire from the beginning of their fiscal years, January 1, 1978 and April 1, 1978, respectively, up to the Effective Date (which shall be the close of their taxable years), will be accrued as liabilities of Empire and Fourth Empire in order that such liabilities are charged aginst the value of their net assets in determining the number of shares of American Leaders to be issued to Empire and Fourth Empire shareholders in the merger. Applicants state that as of October 31, 1978, American Leaders, Empire and Fourth Empire had realized long-term capital gains of $234,292, $280,994 and $227,739 respectively. At the end of their last fiscal years, American Leaders, Empire and Fourth Empire had capital loss carryforwards for tax purposes in the amount of $2,423, $3,449,991 and $3,817,092, respectively, which amounts can be used to offset (1) any realized capital gains prior to the Effective Date, and (2) if utilized prior to the expiration of the applicable carryforward periods, any capital gains realized by American Leaders, the surviving corporation of the merger. In view of the capital loss carryforwards of Empire and Fourth Empire, Applicants conclude that it is unlikely that Empire or Fourth Empire will incur any federal tax that would have to be accrued prior to the merger.

Applicants state that prior to the Effective Date that they will have received either a ruling from the Internal Revenue Service, or opinions from their respective tax counsel, that the proposed merger will constitute a reorganization under Section 368(a)(1)(A) of the Internal Revenue Code. Applicants further state that the consequences of such a reorganization are the following: (1) no Applicant will recognize any gain or loss as a result of the merger; (2) the assets acquired by American Leaders in the merger will have the same tax basis and holding period as those assets had in the hands of Empire and Fourth Empire, respectively; (3) the exchange of Empire and Fourth Empire shares for shares of American Leaders will not result in the recognition of gain or loss by shareholders; and (4) the American Leaders shares so acquired will, in the hands of Empire and Fourth Empire shareholders, retain the same tax basis and holding period as those of the shares exchanged.

According to the application, Applicants' Boards of Directors have each concluded that the use of a tax adjustment formula, to take into account each Applicant's unrealized gains and losses, and tax loss carryforwards, would be inappropriate in this situation. Applicants suggest that the use of a tax adjustment formula among merging investment companies with varying unrealized gains or losses, or tax loss carryforwards, does not result in any "determinatively valuable adjustment to any identifiable group of shareholders." In this regard, Applicants assert that any tax impact depends on a variety of future indeterminable factors, including; (1) market action; (2) the timing of realized gains; and (3) the period of time for which a shareholder holds shares of American Leaders.

Section 17(a) of the Act provides, in part, that it shall be unlawful fo any affiliated person of a registered investment company, or any affiliated person of such person, knowingly to sell to or to purchase from such registered investment company any security or other property. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 2(a)(3) of the Act defines the term "affiliated person" of another person, to include any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state that the Boards of Directors of each Applicant are composed of the same eight members. Applicants submit that because of the identity of membership on their Boards of Directors, and the fact that the same organization, Investors, controls their investment advisers and sub-investment advisers, it might be

deemed that any disposition of portfolio securities by one Applicant to another, or any acquisition by one Applicant of the portfolio securities of another, by merger or otherwise, would be prohibited by Section 17(a) of the Act. Accordingly, Applicants have requested an order of the Commission pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act, the proposed merger of Empire and Fourth Empire into American Leaders.

Applicants submit that the operation of three corporations is generally more expensive than the operation of a single corporation, and state that they believe that certain expenses will be less after the proposed merger than what such expenses would have been if incurred by each Applicant individually. Based upon the projected expenses of American Leaders for the first fiscal year after the merger, Applicants estimate the following savings to shareholders as a result of the elimination of duplicative services: directors fees of $7,520; administrative, personnel, and service expenses of $58,377; custodian, transfer and dividend disbursing agent fees of $20,985; auditing fees of $15,800; and legal fees of $6,150. Applicants assert that, as a result of these savings, sharholders are likely to derive an immediate economic benefit from the proposed merger. Applicants state that these figures exclude costs which are attributable to the proposed merger because such costs are not recurring expenses.

Applicants estimate that Empire and Fourth Empire will incur costs in the amount of $10,200 and $17,850 respectively in connection with the expenses of their special meetings to vote on the proposed merger, and that, including such expenses, the total expenses of the proposed merger will be $62,000. Applicants state that the costs of the merger will be allocated among them so that each Applicant will bear its proportionate share of the expenses of the merger based upon its respective net assets.

Applicants state that their investment advisory fee rates are identical, and that the state expense limitation rules to which each Applicant is subject are also identical. Applicants submit that these state expense limitations rules would be more restrictive on the larger asset base which would result from the proposed merger, than what such expense limitations would be on each Applicant presently. Thus, Applicants assert that the economic benefits of the proposed merger to Investors, the parent of each Applicant's investment adviser, are minimal. Applicants state that Investors is not paying any of the costs of the merger.

Applicants state that because of the nature of Empire and Fourth Empire, continuous offerings of their shares have never been made, and that, as a result, these funds have and will continue to grow smaller because of redemptions. In the opinion of each of their Boards of Directors, if any of the Applicants became uneconomical, they would have to propose a distribution of assets and dissolution, or take other steps as deemed appropriate. Applicants state that the proposed merger will enable shareholders to continue their investment in a fund which would meet their investment goals, and that reorganization appears to each Applicant's Board of Directors to be to the benefit of all shareholders. Applicants further state that each of their Boards of Directors have concluded that the proposed merger is particularly appropriate in view of the similarity of each Applicant's investment objectives, investment policies, management, and management operating procedures. Applicants assert that the increased size of American Leaders after the proposed merger would make American Leaders more attractive to prospective investors, and state that each of their Boards of Directors have considered, among other things, the projected expenses and savings resulting from the merger and the other benefits of the merger to the various parties.

Applicants submit that the proposed merger is consistent with their investment objectives, and with the general purposes of the Act, and does not involve any of the practices which Section 16(a) of the Act was designed to prevent. According to the application, the Boards of Directors have concluded that the proposed transaction is consistent with the policy of each applicant in all material respects.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 27, 1979, at 10:00 a.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-4875 Filed 2-12-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[License No. 09-09-0211]

FLORISTS CAPITAL CORP.

Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Florists Capital Corporation (FCC), 10542 West Pico Boulevard, Los Angeles, California 90064, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to Section 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004(1979)), for approval of a conflict of interest transaction.

Mr. Brown, an employee of the licensee's parent (C. M. Conroy Company, Inc.), is deemed an Associate of Florists pursuant to §107.3 of the Small Business Administration Rules and Regulations.

FCC proposes to make a combination debt and equity investment of $100,000 to a new corporation to be formed by Mr. Brown. The new corporation will use the investment proceeds to acquire Edmund's Wholesale Florists, 756 St. Julien Street, Los Angeles, California 90063 and to supply working capital.

The proposed $100,000 investment falls within the purview of §107.1004(b)(1) of the SBA's Regulations and requires prior written approval from SBA, because of Mr. Brown's ownership of the new corporation.

Notice is further given that any person may, not later than February 28, 1979, submit to SBA written comments on the proposed transaction. Any such comments should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, Washington, D.C. 20416.

A copy of this Notice shall be published in newspapers of general circulation in Los Angeles, California 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated February 5, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-4704 Filed 2-12-79; 8:45 am]

[8025-01-M]

[License No. 06/06-0184]

TSM CORP.

Filing of Application for Approval of a Conflict of Interest Transaction Between Associates

Notice is hereby given, pursuant to § 107.1004(e) of the Regulations governing small business investment companies (13 CFR 107.1004 (1978)), of a request for approval of a conflict of interest transaction between TSM Corp. (Licensee), Suite A-203, 4171 North Mesa, El Paso, Texas 79902, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and Associates.

Licensee was licensed by SBA on November 16, 1976. It is owned 39 percent by Tri-State Wholesale Associated Grocers, Inc. (Tri-State), and 61 percent by approximately 65 additional shareholders, none of whom own as much as 5 percent. Tri-State is a nonprofit wholesale grocery distributor which acts as a central purchasing agent for all of its member stores.

It is proposed that the Licensee provide Financial Assistance to Mr. Hong W. Law and his brother, Howard, as individuals, and to their partnership entity, to acquire certain assets of Wilmac's Inc., a grocery store located in Anthony, Texas. Wilmac's is not associated with the Licensee.

Mr. Howard Law is a Director of the Licensee and, as such, is considered to be an Associate of the Licensee as defined by § 107.3(a) of SBA's Rules and Regulations. His brother and the partnership entity itself become Associates under § 107.3 (e) and (f) respectively.

The proposed financing falls within the purview of § 107.1004(b)(1) of the Regulations and requires a written exemption from SBA. SBA is considering a request for such exemption.

Notice if further given that any person may, not later than February 28, 1979, submit to SBA in writing, comments on the proposed transaction. Any such communication should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in El Paso, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 6, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-4703 Filed 2-12-79; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 133.2]

A.I.D. MISSIONS IN THE NEAR EAST REGION

Pursuant to the authority delegated to me by A.I.D. Delegation of Authority No. 133, dated February 1, 1979 regarding authorization and approval of project and non-project assistance, I hereby redelegate to the Directors of A.I.D. Missions in Afghanistan, Egupt, Jordan, Morocco, Syria, Tunisia, and Yemen, and to any person serving as "Acting Director" in such Missions, authority to exercise any of the following functions with respect to assistance for the country to which the Director or Acting Director is assigned, retaining for myself and any person serving as Acting Assistant Administrator for the Near East concurrent authority to exercise such functions and the authority to limit approval with respect to a particular project:

1. Authority to approve and authorize funding for project and non-project assistance under the Foreign Assistance Act of 1961, as amended, where such assistance does not, over the approved life of the project or non-project assistance, exceed $5 million.

2. Authority to approve amendments amounting cumulatively to up to ten percent (10%) of the life of the project or non-project assistance value for any project or non-project assistance authorized in accordance with the authority redelegated in Section 1, above.

3. References to project and non-project assistance in this Redelegation do not include Housing Investment Guaranties.

4. The authorities redelegated in Sections 1 and 2, above, shall be exercised in accordance with applicable statutes and regulations, policies and procedures now or hereafter established or modified and promulgated within A.I.D., and only after consultation with appropriate Mission or AID/W technical personnel and legal counsel.

5. The authorities redelegated in Sections 1 and 2, above, shall not be further redelegated.

6. This Redelegation of Authority is effective immediately.

Dated: February 2, 1979.

JOSEPH C. WHEELER,
Assistant Administrator, Bureau for Near East.

[FR Doc. 79-4709 Filed 2-12-79; 8:45 am]

[4710-02-M]

ASIA MISSION DIRECTORS, ET AL.

Amendment of Redelegations of Authority To Require Consultation

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority Nos. 5, 38, 99, and 112, I hereby amend existing Redelegations of Authority Nos. 162-7, 164-6 (Revised), 164-9, 164-10 (Revised), 164-11 (Revised), 164-12 (Revised), 164-13 and 164-14 as follows:

1. By adding a new subparagraph 2(f) to read as follows:

"(f) Authority to extend terminal dates for signing Project Agreements and meeting initial conditions precedent for a cumulative period of not to exceed six months for each, and to extend terminal dates for requesting disbursement authorizations, terminal disbursements dates, and Project Assistance Completion Dates (PACD's) for a cumulative period of not to exceed one year for each."

2. By inserting a new paragraph immediately before the penultimate paragraph in each such redelegation as follows:

The authorities enumerated above may be exercised only after appropriate consultation with A.I.D. technical and legal staff.

These amendments are effective immediately.

Dated: February 2, 1979.

JOHN H. SULLIVAN,
Assistant Administrator, Bureau for Asia.

[FR Doc. 79-4708 Filed 2-12-79; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

MINORITY BUSINESS RESOURCE CENTER ADVISORY COMMITTEE

Meeting; Cancellation

The Minority Business Resource Center Advisory Committee meeting scheduled for February 23, 1979 in Miami, Florida at the General Services Administration Building, 51 Southwest 1st Avenue has been *cancelled.* The announcement appeared in the February 6, 1979 issue of the FEDERAL REGISTER (Vol. 44, No. 26) on page 726. Information pertaining to *future* Minority Business Resource Center Advisory Committee meetings may be obained

from Mr. Harvey C. Jones, Advisory Committee Staff Assistant, Minority Business Resource Center, Federal Railroad Administration: (202) 426-2449. Persons wishing to attend and persons wishing to present oral statements at future Advisory Committee meetings should notify the Minority Business Resource Center not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on February 5, 1979.

KENNETH E. BOLTON,
Executive Director.

[FR Doc. 79-4675 Filed 2-12-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

PIG IRON FROM BRAZIL

Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and a countervailing duty investigation is being initiated to determine if benefits which constitute the payment of a bounty or grant within the meaning of the countervailing duty law are paid by the Government of Brazil to manufacturers or exporters of pig iron. A preliminary determination will be made not later than May 20, 1979, and a final determination not later than November 20, 1979.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Ready, Technical Branch, Duty Assessment Division, Office of Operations, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: A petition in satisfactory form was received on November 20, 1978, from the Ad Hoc Committee of Merchant Pig Iron Producers of America, alleging that benefits conferred by the Government of Brazil upon the manufacture, production, or exportation of pig iron from Brazil constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

For purposes of this notice "pig iron" includes merchant pig iron of basic, foundry, malleable, and low phosphorous grades, and is classified under item 607.1500 of the Tariff Schedules of the United States Annotated (TSUSA). This pig iron is free of ordinary customs duty. In the event that it becomes necessary to refer this matter to the United States International Trade Commission pursuant to section 303(a)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1303(a)(2)), there is evidence on record concerning injury to, or likelihood of injury to, an industry in the United States. This information indicates that imports of pig iron from Brazil have been increasing, domestic prices are suppressed, domestic production has stagnated, and the capacity utilization rate of the domestic industry remains low.

Alleged bounties or grants, as listed in the petition, include the following:

(1) Excessive remission of the Industrial Products Tax (IPI), a value added tax.

(2) Excessive remission of non-value added taxes, including a transportation tax.

(3) Exemption from payment of Customs duties and value added taxes on the plant and on equipment imported for the production of pig iron for export. These benefits are allegedly conferred under programs of the Industrial Development Council (CDI) and the Commission for the Granting of Fiscal Benefits to Special Export Programs (BEFIEX).

(4) Accelerated depreciation for the plant and for equipment manufactured in Brazil for production of pig iron for export.

(5) Preferential credit arrangements for the production and storage of pig iron destined for export under Resolutions 398 and 330.

(6) Preferential export financing for pig iron exporters under Resolutions 68 and 331.

(7) Benefits under the "Entreposto Aduaneiro" system which permits small producers of pig iron to receive a remission of the IPI tax immediately upon the sale of their product to trading companies, rather than at the time of export, the date normally applicable.

(8) Exemption from the corporate income tax for profits attributable to export sales.

Pursuant to section 303(a)(4) Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of that statute within six months of receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final determination must be issued within 12 months of the receipt of such petition.

Therefore, no later than May 20, 1979, a preliminary determination on this petition will be made as to whether or not the alleged payments or bestowals conferred by the Government of Brazil upon the manufacture, production or exportation of the merchandise described above constitute a bounty or gant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than November 20, 1979.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and § 159.47(c), Customs Regulations (19 CFR 159.47(c)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954 and § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 6, 1979.

[FR Doc. 79-4696 Filed 2-12-79; 8:45 am]

[4830-01-M]

Internal Revenue Service

PROPOSED REVENUE PROCEDURE ON PRIVATE TAX-EXEMPT SCHOOLS

Proposed Revenue Procedure

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed revenue procedure.

SUMMARY: This document contains a revised proposed revenue procedure which sets forth guidelines the Internal Revenue Service will apply in determining whether certain private schools have racially discriminatory policies as to students and therefore are not qualified for tax exemption under the Internal Revenue Code.

PUBLIC COMMENTS: Before this proposed revenue procedure is adopted, consideration will be given to written comments that are submitted to the Commissioner of Internal Revenue. Written comments should be mailed by April 20, 1979. Comments should be sent to: Commissioner of Internal Revenue, Attention: E:EO, Washington, D.C. 20224. All written commentes will be available for public inspection and copying.

SUPPLEMENTARY INFORMATION: On August 21, 1978, a proposed revenue procedure was announced in News Release IR-2027, and appeared in the FEDERAL REGISTER for Tuesday, August 22, 1978 (43 FR 37296). Many comments were received, and public hearings were held December 5 through 8, 1978. After consideration of the comments and the testimony given at the hearings, the proposed revenue procedure has been revised.

As revised, the proposed revenue procedure applies to two types of private elementary and secondary schools; (1) those which have been held by a court or agency to be racially discriminatory, and (2) "reviewable schools". "Reviewable schools" are those (a) which were formed or substantially expanded at the time of public school desegregation in the community served by the school; (b) which do not have significant minority student enrollment; and, (c) whose creation or substantial expansion was related in fact to public school desegregation in the community.

A school that has been adjudicated to be discriminatory will be considered nondiscriminatory if it has significant minority enrollment, has undertaken actions or programs to attract minority students on a continuing basis. A school that is "reviewable" will be considered nondiscriminatory if it has undertaken actions or programs to attract minority students on a continuing basis. Schools unable to demonstrate such actions or programs, or a significant minority student enrollment, will be considerd racially discriminatory, and tax exemption will be revoked or denied.

This document, a proposed revenue procedure, does not technically meet the Treasury Department's criteria for "significant regulations" set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978 (43 FR 52120). However, because of the considerable public interest expressed in this subject, and the need of the IRS for information, this revenue procedure is being republished in proposed form for public comment.

FOR FURTHER INFORMATION CONTACT:

James E. Griffith, of the Exempt Organizations' Division, Internal Revenue Service, Washington, D.C. 20224 (202-566-6181).

JEROME KURTZ,
Commissioner of Internal Revenue.

SECTION 1. PURPOSE.

.01 This Revenue Procedure sets forth guidelines the Internal Revenue Service will apply in determining whether certain private schools have racially discriminatory policies as to students and therefore are not qualified for tax exemption under section 501(c)(3) of the Internal Revenue Code of 1954.

SEC. 2. BACKGROUND.

.01 A school must have a racially nondiscriminatory policy as to students in order to qualify as an organization exempt from federal income tax. Revenue Ruling 71-447, 1971-2 C.B. 230. This requirement also applies to church-related and church-operated schools. Revenue Ruling 75-231, 1975-1 C.B. 158.

.02 Revenue Procedure 75-50, 1975-2 C.B. 587, sets forth certain affirmative recordkeeping and publicity requirements along with other guidelines for determining whether schools have a racially nondiscriminatory policy as to students. Revenue Procedure 75-50 generally requires tax-exempt private schools to adopt formally a racially nondiscriminatory policy and to publicize that policy annually to the community.

.03 All private schools are subject to the requirement that they have a racially nondiscriminatory policy as to students in order to qualify for and retain tax exemption, and schools are subject to examination to verify the existence of that policy.

The question whether a private school has a racially nondiscriminatory policy as to students is based on all the applicable facts and circumstances.

If a school engages in any acts or practices that are racially nondiscriminatory as to students, the school is not entitled to tax exemption even though it may otherwise comply with the provisions of Revenue Procedure 75-50 or this Revenue Procedure. For example, if there are overt acts of racial discrimination as to students, the school is not entitled to federal income tax exemption.

.04 There are situations in which a school's formation or expansion at the time of public school desegration in the community casts doubt on the existence of a bona fide racially nondiscriminatory policy. In such situations the mere assertion and publication of a non-discriminatory policy may be insufficient evidence of a bona fide nondiscriminatory policy. In these cases it is appropriate to examine whether actions have been taken by the school to overcome the indications that the school was established to foster racial segregation and that minorities are not welcome at the school. See *Norwood v. Harrison*, 382 F. Supp. 921 (N.D. Miss. 1974), on remand from the Supreme Court, 413 U.S. 455 (1973); *Brumfield v. Dodd*, 405 F. Supp. 338 (E.D. La 1975).

This Revenue Procedure sets forth guidelines to identify certain private elementary and secondary schools that are racially nondiscriminatory, even though they claim to have a racially nondiscriminatory policy as to students.

.05 This Revenue Procedure applies only to private elementary and secondary schools, other than schools organized and operated solely for the education of the handicapped or the emotionally disturbed. For example, it applies to church-related and church-operated elementary and secondary schools, but does not apply to colleges and universities, pre-schools, nursery schools, or schools for the blind or the deaf.

SEC. 3. DEFINITIONS.

.01 A racially nondiscriminatory policy as to students means that: the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

Revenue Ruling 71-447. The Service considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin. Revenue Procedure 75-50.

.02 A school "adjudicated to be discriminatory" means any school found to be racially nondiscriminatory as to students by a final decision of a federal or state court of competent jurisdiction; by final agency action of a federal administrative agency in accordance with the procedures of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*; or by final agency action of a state administrative agency following a proceeding in which the school was a party or otherwise had the opportunity for a hearing and an opportunity to submit evidence. The terms "final decision of a federal or state court" and "final agency action" mean actions or decisions from which no further administrative or judicial appeal can be taken.

.03 "Reviewable school" means a school (i) formed or substantially expanded at the time of public school desegration in the community served by the school; (ii) which does not have significant minority student enrollment; and, (iii) whose creation or substantial expansion was related in fact to public school desegration in the community. A school will not be treated as a reviewable school unless all three of the foregoing characteristics exist.

(a) A school will be considered formed or substantially expanded at the time of public school desegregation in the community served by the school if its formation or expansion takes place during any calendar year any part of which falls within the period beginning one year before implementation of a public school desegregation plan in the community (whether a court-ordered or voluntary plan) and ending three years after substantial implementation of such desegregation order or plan. "Voluntary plan" includes, for example, a written desegregation plan entered into with the Department of Health, Education, and Welfare (HEW), or with a state agency.

A school will not be considered to have substantially expanded during a particular calendar year if the increase in the maximum number of students enrolled at any time during that calendar year is 20 percent or less of the maximum number of students enrolled at any time during the immediately preceding calendar year. If the increase is more than 20 percent, a determination will be made whether the expansion is related in fact to public school desegregation, as described in section 3.03(c), *infra*, before the school will be treated as a reviewable school.

(b) Whether a school's minority student enrollment is significant depends on all the relevant facts and circumstances. Consideration will be given to special circumstances which limit the school's ability to attract minority students, such as an emphasis on special programs or special curricula which by their nature are of interest only to identifiable groups which are not composed of a significant number of minority students, so long as such programs or curricula are not offered for the purpose of excluding minorities. In giving such consideration, the Service will also take into account whether schools in similar circumstances are not limited in their ability to attract minority students.

In any event, a school will be considered to have significantly minority student enrollment if its percentage of minority students is 20 percent or more of the percentage of the minority school age population in the community served by the school. For example, if 50 percent of the school age population in the community is minority, and the school enrolls 200 students, a school would not be "reviewable" if it had at least 20 minority students. (20 percent × 50 percent = 10 percent. 10 percent × 200 students = 20 students.)

If a particular school which is part of a system of commonly supervised schools would be treated as not having significant minority student enrollment under the foregoing provisions, it may nevertheless be considered to have a significant minority student enrollment if all the following conditions are met:

1. Taking into account all schools operated by the system within the community, the school system, in the aggregate, has significant minority student enrollment;

2. The schools within the community serve designated geographical areas, which designations are based on considerations other than race; and,

3. There is no evidence that the school system operates on a racially nondiscriminatory basis, such as through the operation of a dual school system based on race.

(c) Ordinarily, the formation or substantial expansion of a school at the time of public school desegregation in the community will be considered to be related in fact to public school desegregation. However, notwithstanding this general rule, the Service will consider evidence that a school's formation or substantial expansion was not related in fact to public school desegregation in the community and that the school therefore is not a reviewable school. The determination that a school's formation or substantial expansion is not related in fact to public school desegregation must be based on objective evidence, taking into account all the facts and circumstances relating to the school's formation or expansion. The following are illustrative of facts which are relevant in making this determination, but these facts are not exclusive.

Facts tending to indicate that the formation or substantial expansion of a school was not related in fact to public school desegregation include the following:

(1) The students to whom the opening or substantial expansion of the school is attributable are not to any significant extent drawn from the public school grades subject to desegregation in the community served by the school. For example, the students may be drawn from other private schools, or from other areas not undergoing public school desegregation.

(2) The rate of expansion is not greater than the rate of expansion experienced by the school in years prior to the time of public school desegregation, as defined in section 3.03(a) of this procedure.

(3) The expansion is attributable to an increase in the school age population in the community.

(4) The expansion results from a merger of the school with another private school and neither of the schools is otherwise "reviewable."

(5) The expansion is attributable to a continuation of previous periodic expansion by adding grade levels as the school's enrollment in lower grades advance, and the school does not enroll a significant number of new students in the newly added grades from the public schools.

(6) The school was formed or expanded in accordance with a long-standing practice of a religion or religious denomination which itself is not racially discriminatory to provide schools for religious education when circumstances are present making it practical to do so (such as a sufficient number of persons of that religious belief in the community to support the school), and such circumstances are not attributable to a purpose of excluding minorities.

(7) At the time of formation or expansion, the school had some minority students, faculty, or board members.

Facts tending to indicate that the formation or substantial expansion of a school was related in fact to public school desegregation in the community include:

(8) The opening or substantial expansion of the school occurs in one or more of the same grades that are subject to public school desegregation.

(9) The students who enroll are primarily drawn from the public schools.

(10) The school occupies or utilizes former public school facilities made available to the school in the course of implementation of the public school desegregation plan.

(11) The school is a member of an organization which practices or advocates racial segregation in schools.

(12) The school, or its founders, officers, substantial contributors or trustees, have engaged in efforts to oppose desegregation of the public schools.

(13) The school in practice limits enrollment to students from a geographic area (or areas) with few or no minorities, and this limitation coincides with a public school desegregation plan that involves exchanges of students between such area or areas and one or more other areas that have a substantial school age minority population.

(14) Non-minority faculty members added to the school's staff at the time of its formation or substantial expansion are drawn primarily from the public school system subject to desegregation.

.04 The "community" served by the school means the public school district within which the school is located, together with any other public school district from which the school enrolls a substantial percentage of its student body. As an objective guideline, the Service will consider 20 percent a substantial percentage of its student body. Where a court desegregation order involves the mandatory assignment of students to or from any of such foregoing school districts, "community" includes all public school dis-

tricts covered by the order, and the appropriate percentage of minority students will be determined with reference to all such districts. For example, if the school is located in public school district A, but draws 30 percent of its students from school district B, which is under a court-ordered busing program with school district C, the relevant community for the particular school, for purposes of computing the relevant minority school age population, is school districts A, B, and C.

For purposes of determining minority school age population, the Service will rely generally on satistics compiled by the Department of Health, Education and Welfare (HEW) on public school enrollment, unless the school furnishes acceptable statistics relating to its community showing both public and private school enrollment. The enrollment data used by HEW concerning the minority school age population of a public school district may be obtained from local school boards, which are required to maintain such information by HEW regulations.

.05 "Minority" is defined as including the following separate categories: blacks; Hispanics; Asians or Pacific Islanders; and, American Indians or Alaskan natives. These classifications are in accordance with guidelines of the Department of Commerce which are currently set forth at 43 Fed. Reg. 19,269 (1978). The relevant minority for purposes of computing the percentage of minority student enrollment under this Revenue Procedure is the group or groups found to have been the object of discrimination in the court or agency adjudication, or in the public school desegregation proceeding. For example, if both blacks and Hispanics have been found in a court or agency adjudication to have been the object of discrimination, the appropriate percentage of minority students will be determined separately for blacks and for Hispanics.

SEC. 4. GUIDELINES.

.01 *Schools adjudicated to be discriminatory.* Notwithstanding a prior adjudication of racial discrimination as to students, a school adjudicated to be racially discriminatory as to students will be considered to be now operated on a nondiscriminatory basis if the school can show that: (a) the school currently has significant minority enrollment, as defined in section 3.03(b), *supra;* or, (b) the school has undertaken actions or programs reasonably designed to attract minority students on a continuing basis. See section 4.03, *infra,* for examples of such actions or programs. Ordinarily, an adjudicated school will not be considered to be operated on a racially nondiscriminatory basis unless the school has enrolled some minority students.

.02 *"Reviewable schools."*—Notwithstanding the fact that a school is a reviewable school as defined in section 3.03, the school will be considered to have a racially nondiscriminatory policy as to students if the school can show that it has undertaken actions or programs reasonably designed to attract minority students on a continuing basis. See section 4.03, *infra,* for examples of such actions or programs.

.03 Actions and programs reasonably designed to attract minority students must convey clearly to the affected minority community that, notwithstanding the circumstances of the school's formation or expansion and the absence of a significant number of minority students, the school, in fact, is operating on a nondiscriminatory basis and minorities are welcome at the school. The level of actions and programs that are adequate may vary from school to school and depends on the circumstances of the school, including the level of minority student enrollment. Examples of actions and programs that may contribute to attracting minority students on a continuing basis include:

1. Active and vigorous minority recruitment programs, such as extensive public advertisements in media designed to reach the minority community, specifically inviting minority applicants; communication to minority groups and minority leaders in the community inviting minority applicants; personal contacts of prospective minority students; and, participation in local, regional, or national programs designed to develop new sources of minority recruitment for the school.

2. Publicized offering of tuition waivers, scholarships or other financial assistance, with emphasis on their availability for minority students; or, actual granting of such financial assistance to minority students.

3. Employment of, or substantial efforts to recruit, minority teachers or other professional staff.

4. Participation with integrated schools in sports, music, and other events or activities.

5. Special minority-oriented curriculum or orientation programs.

6. Minority members of the board or other governing body of the school.

The failure of such actions or programs to obtain some minority student enrollment within a reasonable period of time will be a factor in determining whether such activities are adequate or are undertaken in good faith.

SEC. 5. PROCEDURES FOR HANDLING SCHOOLS CURRENTLY RECOGNIZED AS TAX-EXEMPT

.01 *Schools adjudicated to be discriminatory.* The Service will propose revocation of exemption for schools adjudicated to be discriminatory which do not meet the guidelines of section 4.01, *supra.*

.02 *"Reviewable schools".* The Service will propose revocation of exemption for reviewable schools which do not meet the guidelines of section 4.02, *supra.*

.03 *Tax deductibility of contributions.* The Service will apply the provisions of Revenue Procedure 72-39, 1972-2 C.B. 818, in determining the tax deductibility of contributions made to adjudicated or reviewable schools.

.04 *General guidelines.* Proposed revocations of exemption will be processed in accordance with the procedures set forth in Revenue Procedure 73-8, 1973-1 C.B. 754, and this Revenue Procedure. After exhausting its administrative remedies, the school may seek judicial relief.

In appropriate cases, the Service will consider deferring issuing notice of a final revocation of exemption to a school not meeting the standards of this Revenue Procedure, if the school so requests and sets forth actions already taken and to be undertaken in good faith which demonstrate a racially nondiscriminatory policy in accordance with section 4 of this Revenue Procedure.

SEC. 6. APPLICATIONS FOR TAX-EXEMPT STATUS.

.01 *Schools adjudicated to be discriminatory.* A favorable ruling or determination will be issued to a school adjudicated to be discriminatory only if it meets the guidelines of section 4.01, *supra.*

.02 *"Reviewable schools".* A favorable ruling or determination will be issued to a reviewable school which has commenced operation only if it meets the guidelines of section 4.02, *supra.* A favorable ruling or determination will be issued to a school with no record of actual operation only if the school's proposed operations can be described in sufficient detail to permit a conclusion that the school will not be classified as a reviewable school, or will clearly meet the guidelines of section 4.02.

.03 *General guidelines.* Applications for tax-exempt status will be processed in accordance with the procedures set forth in Revenue Procedure 72-4, 1972-1 C.B. 706, and this Revenue Procedure. A school which has either received an adverse ruling or determination or which has exhausted its administrative remedies may seek judicial relief.

SEC. 7. NATIONAL OFFICE APPEALS AND REVIEW.

Applications for exemption and examinations of private elementary and secondary schools will be reviewed in

the National Office under procedures established by the Assistant Commissioner (Employee Plans and Exempt Organizations). Under this procedure, appeals from adverse key district actions in these cases will be considered by the National Office rather than the Regional Directors of Appeal.

SEC. 8. EFFECTIVE DATE.

In the case of schools adjudicated to be discriminatory, this Revenue Procedure will be effective on final publication for purposes of examinations and applications for exemptions. In the case of reviewable schools, this Revenue Procedure will be effective for purposes of examinations on and after January 1, 1980. For reviewable schools whose applications for exemption are pending on the date of final publication, but which do not meet the provisions of section 6 of this Revenue Procedure, the Service will, if requested by the school, defer any action on the application for exemption until January 1, 1980, to give the school an opportunity to supplement its application to demonstrate compliance with section 6. Otherwise, for purposes of applications for exemption by reviewable schools, this Revenue Procedure will be effective on final publication.

SEC. 9. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 75-50 is amplified, and continues to be applicable to all private schools, whether or not affected by this Revenue Procedure.

[FR Doc. 79-4801 Filed 2-12-79; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

120-BED NURSING HOME CARE UNIT, CLINICAL FACILITIES, AND AN UNDERGROUND PARKING GARAGE, VETERANS ADMINISTRATION MEDICAL CENTER, WASHINGTON, D.C.

Availability of Final Environmental Impact Statement

Notice is hereby given that a document entitled "Final Environmental Impact Statement for a 120-Bed Nursing Home Care Unit, Clinical Facilities, and an Underground Parking Garage, Veterans Administration Medical Center, Washington, D.C.," dated December 1978, has been prepared as required by the National Environmental Policy Act of 1969.

The proposed project includes new construction and necessitates alterations in the existing hospital building. The new construction will contain (1) a Nursing Home Care Unit of 120 beds (2) Clinical Facilities to include the Dental Service, Audiology and Speech Pathology and (3) an Underground Parking Garage for approximately 650 cars.

This final statement responds to comments received on the draft Environmental Impact Statement. This document and the draft Environmental Impact Statement are placed for public examination in the Veterans Administration office in Washington, D.C.

Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street, NW., Washington, DC 20420, Phone 202-389-2526.

Single copies of the Final Statement may be obtained on request to: Director, Environmental Affairs Office (66) Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: February 7, 1979.

MAURY S. CRALLE, Jr.,
Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79-4693 Filed 2-12-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 40F)]

BALTIMORE & OHIO RAILROAD CO. AND BUFFALO, ROCHESTER & PITTSBURGH RAILWAY CO.

Discontinuance of Service—Abandonment at Dock Junction in Rochester, Monroe County, N.Y.; Findings

Notice is hereby given pursuant to Section 10903 of the Interstate Commerce act (formerly Section 1a) (49 U.S.C. 19093) that by a Certificate and Decision decided January 24, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), and for public use as set forth in said decision), the present and future public convenience and necessity permit the discontinuance of service by the B&O on, and abandonment by the BR&P of, a line of railroad known as the Dock Branch extending from railroad milepost 0.0 at Dock Junction to railroad milepost 1.14 at the end of line, a distance of approximately 1.14 miles, in Rochester, Monroe County, N.Y. A certificate of public convenience and necessity permitting abandonment and discontinuance of service was issued to the Baltimore and Ohio Railroad Company and the Buffalo, Rochester and Pittsburgh Railway Company. Since no investigation was instituted, the requirement of §1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than February 28, 1979. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective March 30, 1979.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4727 Filed 2-12-79; 8:45 am]

[7035-01-M]

[Docket No. AB-1 (Sub-No. 71F)]

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Abandonment Near Rochester and Stewartville in Olmsted County, MN; Findings

Notice is hereby given pursuant to Section 10903 of the Interstate Commerce Act (formerly Section 1a) (49 U.S.C. 10903) that by a Certificate and Decision decided January 18, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the (1) protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), and further that North Western shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, all bridges and all culverts on the line for a period of 120 days from the effective date of this certificate and decision unless this property has first been offered, upon reasonable terms, to public authorities or other responsible persons interested in acquiring the property for public use; and (2) North Western shall work with the Minnesota Department of Natural Resources to assure that the distrubance of prairie grass is kept to a minimum during the salvaging of the line and that salvaging operation occur during the period August 1 through

May 1 in order to mitigate the impact on the wildlife during their nesting season, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Company of a line of railroad known as the Stewartville Spur extending from railroad milepost 146.0 near Rochester to railroad milepost 158.6 at the end of the line near Stewartville, a distance of 12.6 miles, in Olmsted County, MN.

A certificate of public convenience and necessity permitting abandonment was issued to the Chicago and North Western Transportation Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than February 28, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective March 30, 1979.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4724 Filed 2-12-79; 8:45 am]

[7035-01-M]

[Docket No. AB-160 (Sub-No. 2F)]

MONTOUR RAILROAD CO.

Abandonment in Bethel Park, Allegheny County, Pa.; Findings

Notice is hereby given pursuant to section 10903 of the Interstate Commerce Act (formerly Section 1a) (49 U.S.C. 10903) that by a Certificate and Decision decided January 24, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment, Goshen,* 354 I.C.C. 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Montour Railroad Company of a portion of its main line of railroad extending from railroad milepost 39.9 to the end of the line at railroad milepost 41.3, a distance of 1.4 miles, in Bethel Park, Allegheny County, PA. A certificate of public convenience and necessity permitting abandonment was issued to the Montour Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than February 28, 1979. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective March 30, 1979.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4726 Filed 2-12-79; 8:45 am]

[7035-01-M]

[Docket No. AB-7 (Sub-No. 77F)]

STANLEY E. G. HILLMAN

Abandonment Near Beverly Junction and Hanford in Kittitas, Yakima and Benton Counties, WA; Findings

Notice is hereby given pursuant to Section 10903 of the Interstate Commerce Act (formerly Section 1a) (49 U.S.C. 10903) that by a Certificate and Decision decided January 18, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the (1) protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen,* 354 I.C.C. 584 (1978), and further that Milwaukee Road shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, all bridges and all culverts on the line for a period of 120 days from the effective date of this certificate and decision unless this property has first been offered, upon reasonable terms, to public authorities or other responsible persons interested in acquiring the property for public use; (2) Milwaukee Road shall notify the Washington Historical Society 30 days prior to salvaging the track so that a trained archaeologist can be available to monitor salvage opertions; and (3) Milwaukee Road shall include in its contract for sale of those portions of the right-of-way within which archaeological sites have been identified, a provision requiring the purchasers to notify the Washington Historical Society of their plans for development of the property, the present and future public convenience and necessity permit the abandonment by Stanley E. G. Hillman, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, of a line of railroad know as the Hanford Branch extending from railroad milepost 0.0 near Beverly Junction to railroad milepost 20.8 near Hanford, a distance of 20.8 miles, in Kittitas, Yakima and Benton Counties, WA. A certificate of public convenience and necessity permitting abandonment was issued to Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than February 28, 1979. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective March 30, 1979.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4725 Filed 2-12-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

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[6320-01-M]

1

[M-193 Amdt. 4; Feb. 7, 1979]

CIVIL AERONAUTICS BOARD.

Notice of deletion of items from the February 7, 1979 meeting agenda.

TIME AND DATE: 10 a.m., February 7, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

12. Docket 33221, joint application of frontier and Louisville for exemption authority in the Louisville-Kansas City market (memo 8452, BPDA, OGC).

14. Dockets 33824 and 33514. TWA's application for pendente lite exemption to provide immediate air transportation in approximately 70 named city-pair markets; Air Florida's application for pendente lite exemption to operate in the New York-Miami/West Palm Beach market (memo 8435-A, BPDA, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: In light of the age of this application and present availability of dormant authority in the affected market under the new Act, this item (12) is being deleted from the February 7, 1979, agenda in order that a revised recommendation may be submitted by staff. Item 14 is being deleted because it requires additional staff discussion. Accordingly, the following members have voted that agency business requires deletion of items 12 and 14 from the February 7, 1979, agenda and that no earlier announcement of these deletions was possible:

Chairman Marvin S. Cohen
Member Elizabeth E. Bailey
Member Gloria Schaffer

[S-286-79 Filed 2-9-79; 10:20 am]

[6320-01-M]

2

[M-194; Feb. 8, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., February 15, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Docket 32860, elimination of the reporting of user charge data for foreign en route and airport facilities and services (memo 7998-A, OEA, BCAA, BIA, OGC).

3. Docket 34052, final rule to amend section 213.3(d) of the economic regulations to remove the mandatory 30-day waiting period for effectiveness of orders requiring foreign air carriers to discontinue operation of existing schedules (memo 8285-A, BIA, OGC, BPDA).

4. Amendment of Part 302 to set uniform 30-day answer period (memo 8456, OGC).

5. Final rules amending Part 384 statement of organization delegation of authority, and availability of records and information and Part 385 delegations and review of action under delegation; nonhearing matters. These amendments transfer the functions and delegations of the former Bureau of Accounts and Statistics (BAS) to a new Bureau of Carrier Accounts and Audits (BCAA), to the Office of Economic Analysis (OEA) and to the Office of the Comptroller (OC) (BCAA, OEA, OC, OGC).

6. Request for public comments regarding a report that the Board must make to Congress about direct sale of charter (memo 8490, OGC, OI, OEEO, BCAA, BLJ, BIA, BPDA, OEA, BCP).

7. Docket 26509 (EDR-264)—Termination of rulemaking proceeding proposing amendments to Part 212 charter regulations applicable to foreign scheduled carriers (memo 4418-A, OGC, BIA).

8. Docket 32420, Part 223 of the Board's Economic Regulations—Final rule amending Part 223 to permit free or reduced-rate interstate transportation to employees of foreign air carriers not serving U.S. points (memo 8143-A, OGC).

9. Docket 32466, Part 302, expedited procedures for licensing and rates cases: Supplemental notice of rulemaking (OGC, BIA, BPDA, BLJ).

10. Dockets 33112 and 33283. Texas International—National acquisition case and Pan American—National acquisition case. National Airlines application to take the testimony of Dr. Robert H. Frank (OGC).

11. Docket 32872, *Braniff Airways, Inc.* v. *Texas International Airlines, Inc.* Section 411 enforcement proceeding (OGC) (memo 8504).

12. Dockets 28213 et al. Applications of seven Japanese air freight forwarders—Final order (memo 8492, OGC).

13. Docket 30055, Phoenix-Las Vegas-Reno nonstop service investigation—Draft order (memo 6403-J, OGC).

14. Docket 30635, Arizona service investigation (memo 8158-E, OGC).

15. Docket 34258, application of Continental Air Lines for Denver-Reno exemption authority (memo 8495, OGC).

16. Dockets 33363, 32504, 32505, 32506, 32507, 32508, 32509, 32510, 32511, 32514, 32515, and 32580; former large irregular air service investigation (memo 7690-M, OGC).

17. Dockets 32327, 33361, 33362, 33363, 33941, 34292, 34293, 34241, 34107, 34108, 34476, 34477, 34281, and 34282; former large irregular air carrier investigation—Order granting six motions to consolidate and delegating authority to the presiding administrative law judges to grant or dismiss future motions to consolidate (memo 7690-N, OGC).

18. Docket 31013; petition for reconsideration of order 78-3-63, which approved an air traffic conference of America resolution allowing intrastate carriers to participate in the area settlement plan, provided that certain practices are optional, rather than specific (memo 7750-D, BPDA, BCP, OEA, OGC).

19. Docket 32881, Petition of General Mills, Inc., and Trans-Mark Services, Inc., for the Board to reexamine the Air Traffic Conference of America's resolution governing establishment of travel agent offices on customer premises (in-plant agency resolution) under section 403 of the Act (memo 8496, BPDA, BCP, OGC).

20. Docket 26951; Motion by Trans International Airlines for modification of arbitrator's award and other relief (memo 8494, BPDA).

21. Docket 31298, Sky West's application and motion to show cause for certification of those points on their system which were not certificated in the Arizona service investigation, Docket 30635 (BPDA).

22. Dockets 32873, 33490, 33505, 33535, 33585, 33730, and 33738; Applications of American, Allegheny, TWA, Braniff, Northwest, Ozark, and Continental for Reno-Chicago authority (memo 8179-A, BPDA, OGC, BLJ).

23. Dockets 32573, 32628, 32756, 33606, 34079, 32725, and 32758; application of the city of Birmingham for institution of route proceeding for new nonstop authority in the Birmingham - Cleveland / Dallas / Houston /Philadelphia/Pittsburg/St. Louis/Tampa/

Washington markets; Braniff's Southern's Frontier's, and Ozark's applications, respectively requesting the authority sought by Birmingham in whole or in part, and motions to consolidate; as amended certificate application of Allegheny Airlines for Birmingham-Bristol/Kingsport/Johnson City/Dallas / Houston / Philadelphia / Pittsburgh /Tampa/Washington nonstop authority; certificate application of Piedmont Aviation for Birmingham-Charlotte/Dallas/Greensboro / Houston / Richmond / Roanoke / Washington nonstop authority (memo 8497, BPDA).

24. Docket 33754, application of TWA for amendment of its certificate of public convenience and necessity for route 2 for authority in 72 new city-pair markets (memo 8499, BPDA, OGC).

25. Dockets 33824 and 33514; TWA's application for pendent lite exemption to provide immediate air transportation in approximately 70 named city-pair markets; Air Florida's application for exemption to operate in the New York-Miami/West Palm Beach market (memo 8435-A, BPDA, OGC).

26. Dockets 33747, 33920, and 34173, Eastern's application and petition for an order to show cause requesting Albuquerque-St. Louis/Atlanta authority (BPDA).

27. Docket 34370, Ozark's 60-day notice to suspend nonstop and/or single-plane service in several markets (memo 8488, BPDA, OCCR).

28. Docket 34473—Airwest's 401(j)(2) notice of intent to suspend service in 85 markets in 60 days (BPDA, OCCR) (memo 8505).

29. Docket 34148, petition of the County of Kern for reconsideration of the Board's notice of intent not to prohibit Hughes Airwest from suspending service at Bakersfield (BPDA) (memo 8415-A).

30. Dockets 26681, 34565, and 34513; Hughes Airwest petition for modification of orders granting temporary suspension authority and notice of intent to terminate service at Astoria/Seaside, Oregon; petition of the Port of Astoria requesting the Board to determine the essential air transportation of Astoria/Seaside and name a replacement carrier (BPDA, OCCR) (memo 4737-E).

31. Docket 33752, notice of Airwest to terminate service at Santa Maria, Calif. (BPDA).

32. Docket 34296, application of Air New England for removal of its one-stop restriction in the Burlington-New York market and motion to consolidate in Docket 33658 (memo 8326-B, BPDA, OGC, BLJ).

33. Docket 34544, notice of Frontier Airlines, Inc., of intent to terminate service at Enid, Ponca City, and McAlester, Okla. (memo 8060-B, BPDA, OCCR, OGC, BCP).

34. Dockets 32773, 33026, 33508, and 23888; Allegheny replacement service agreements; Altair petition (memo 8502, BPDA).

35. Docket 25476, agreement CAB 23157, organizational documents of Airline Tariff Publishing Co., Inc., (ATPCO) (BPDA, BCP, OGC) (memo 8506).

36. Docket 33218, boarding priority rules of the U.S. certificated carriers (BPDA) (memo 8165-A).

37. Tariff rule governing acceptance of stretcher patients proposed by United (memo 8493, BPDA).

38. Air carrier rules governing the application of tariffs (memo 8503, BPDA, BCP).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-300-79 Filed 2-9-79; 2:42 pm]

[6712-01-M]

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, February 8, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special closed commission meeting.

CHANGES IN THE MEETING: The following item has been deleted:

AGENDA, ITEM NUMBER, AND SUBJECT

Hearing—6—Applications for review of Review Board decision and related interlocutory requests in the Gainesville, Fla., new FM station proceeding (Docket Nos. 20622-4).

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: February 7, 1979.

[S-287-79 Filed 2-9-79; 10:20 am]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, February 14, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission meeting following the open meeting.

MATTERS TO BE CONSIDERED:

AGENDA, ITEM NUMBER, AND SUBJECT

General—1—*McGraw-Hill Boradcasting Co., Inc.* v. *FCC*, No. 78-1895 and 78-2225.

Complaints and Complaince—1—Field investigation into the operation of radio stations WDAS and WDAS-FM, Philadelphia, Pa.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: February 7, 1979

[S-288-79 Filed 2-9-79; 10:20 am]

[6712-01-M]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, February 14, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTERS TO BE CONSIDERED:

AGENDA, ITEM NUMBER, AND SUBJECT

General—1—Use of radio for the remote reading of utility meters (Docket No. 20005) and for automated utility distribution systems (RM-2824).

General—2—Authority of the Executive Director to act on requests by other Federal agencies for disclosure of information submitted to the Commission in confidence.

General—3—Reinstatement of radiotelephone second class operator license issued to Arthur W. Brothers.

Safety and Special Radio Services—1—Credit for the telegraphy portion of the amateur extra class examination to applicants who hold the amateur extra first class license.

Common Carrier—1—Notice of inquiry on treatment of litigation expenses for rate making purposes.

Common Carrier—2—Provision of domestic facilities to International Record Carriers by A.T. & T. (CC Docket No. 21499).

Cable Television—1—Applications for certificates of compliance to carry WVIA-TV (Educ), Scranton, Pa., filed by Cablevision Systems, et al.

Cable Television—2—Petition for waiver filed by Warner Cable Corp.

Cable Television—3—Petition for waiver filed by Midwest Video Corp.

Assignment and Transfer—1—Assignment of KFMK, Houston, Tex., from Liberty Communications Corp. to First Media Corp. (BALH-2731, BASCA-909).

Renewal—1—Petition to deny the renewals of all five Washington, D.C. TV stations.

Renewal—2—Imposing EEO sanctions on certain broadcast stations.

Renewal—3—Petition to deny renewal of KSBW-TV, Salinas, Calif.

Aural—1—Application for modification of facilities filed by Hall Broadcasting Co., Inc., WIYD-FM; Palatka, Fla., and petition for reconsideration of the Commission's memorandum opinion and order, FCC 78-721 granting the application filed by Rounsaville of Jacksonville, Inc. et al.

Television—1—Applications of KLOC Broadcasting (BPCT-4982) and Leejon Broadcasting (BPCT-5021) for a television station on channel 35, Salinas, Calif.

Broadcast—1—Petition for rulemaking (RM-2830), filed by the National Association of Broadcasters, to permit rebroadcast of CB and Amateur transmissions of emergency information.

Broadcast—2—Waiver of the "off-network" restriction of the prime time access rule, filed by WBRE-TV, Wilkes-Barre, Pa.

Broadcast—3—Reconsideration of the assignments of FM channel 243 to Fort Walton Beach, Fla. and of FM channel 221A to Destin, Fla.

Complaints and Compliance—1—Fairness doctrine complaint of the Committee for

the Scientific Investigation of Claims of the Paranormal Against NBC.
Complaints and Compliance—2—Complaint regarding the program "Youth Terror: The View From Behind the Gun."
Complaints and Compliance—3—Response of KIFW (AM & TV), Sitka, Alaska, to a notice of apparent liability.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: February 7, 1979.

[S-289-79 Filed 2-9-79; 10:20 am]

[6450-01-M]

6

FEBRUARY 8, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 3:30 p.m., February 8, 1979.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: An additional item is added to this previously announced closed meeting relating to pending civil litigation.

CONTACT PERSON FOR FURTHER INFORMATION:

Kenneth F. Plumb, Secretary, 202-275-4166.

[S-294-79 Filed 2-9-79; 11:17 am]

[6730-01-M]

7

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 8, 1979, 44 FR 8099.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: February 14, 1979, 10 a.m.

CHANGE IN THE MEETING: Addition of the following item to the open session:

4. Rates on Neptune Orient Line and Far Eastern Shipping Co.

[S-302-79 Filed 2-9-79; 3:48 pm]

[6735-01-M]

8

FEBRUARY 7, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., February 7, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Closed (pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS CONSIDERED: Diposition on the merits:

Secretary of Labor v. Peter White Coal Mining Corp. HOPE 78-374, etc., 78-344, etc., 78-509, 78-535, etc.; Peabody Coal Co., VINC 78-386; United States Steel Corp., PITT 78-335; Monterey Coal Co., VINC 78-416; Rochester & Pittsburgh Coal Co., PITT 78-323; Helvetia Coal Co., PITT 78-322; Iselin Preparation Co., PITT 78-344; and Energy Fuels Corp., DENV 78-410.

Eastern Associated Coal Corp. v. Secretary of Labor, PITT 76X203; Florence Mining Co., Helen Mining Co., Oneida Mining Co., North American Coal Corp. v. Secretary of Labor, Pitt 77-15, 77-16, 77-17, 77-18, 77-19, 77-23; Alabama By-Products Corp. v. Secretary of Labor, BARB 76-153; Inland Steel Coal Co. v. Secretary of Labor, VINC 77-164.

Vote: Voting to close the meeting: Commissioners Waldie (Chairman), Lawson, Nease, and Jestrab. It was determined by this vote that Commission business required that this meeting be closed. Further, the Commission members voted to hold the meeting immediately on the basis that agency business so required and to issue public notice as soon as practicable.

Attendance: Those present at that closed meeting were: Commissioners Waldie (Chairman), Lawson, Nease, and Jestrab; Al Treherne; Robert Phares, Mary Masulla; Arthur Sapper; Dan Delacey; General Robert Pleasure; Joanne Kelley, Carolyn Crittenden; Cris Gilbert and Joan Haugen.

CONTACT FOR MORE INFORMATION:

Joanne Kelley, 202-653-5632.

[S-296-79 Filed 2-9-79; 12:07 pm]

[6735-01-M]

9

FEBRUARY 8,1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE; 8:30 p.m., February 8, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Closed (pursuant to 5 U.S.C. 552b(c) (10)).

MATTERS CONSIDERED:

Secretary of Labor v. Republic Steel Corp., IBMA 76-28, MORG 76-21.

Secretary of Labor v. Republic Steel Corp., IBMA 77-39, Morg 76X95-P.

Secretary of Labor v. Kaiser Steel Corp., DENV 77-13-P.

Vote: Voting to close the meeting: Commissioners Waldie (Chairman), Lawson, Nease, Jestrab, and Backley. It was determined by this vote that Commission business required that the meeting be closed. Further the Commission members voted to hold the meeting immediately on the basis that agency business so required and to issue public notice as soon as practicable.

Attendance: Those present at that closed meeting were: Commissioners Waldie (Chairman), Lawson, Nease, Backley, and Jestrab; Al Treherne; Robert Phares, Mary Masulla; Arthur Sapper; Dan Delacey; Howard Schellenberg; Jim Lastowka; Phil Paschall; General Counsel Robert Pleasure; Joanne Kelley; Carolyn Crittenden and Cris Gilbert.

CONTACT FOR MORE INFORMATION:

Joanne Kelley 202-653-5632.

[S-297-79 Filed 2-9-79; 12:07 pm]

[6735-01-M]

10

FEBRUARY 9, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., February 12, 1979.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: This meeting may be closed.

MATTERS TO BE CONSIDERED:

The Commission will consider and act upon the following:

Secretary of Labor v. Peter White Coal Mining Corp. HOPE 78-374 etc., 78-444 etc., 78-509, 78-535 etc.; Peabody Coal Co., VINC 78-386; United States Steel Corp., PITT 78-335; Monterey Coal Co., VINC 78-416; Rochester & Pittsburgh Coal Co., PITT 78-323; Helvetia Coal Co., PITT 78-322; Iselin Preparation Co., PITT 78-343, 78-344; and Energy Fuels Corp. DENV 78-410, (disposition on the merits).

Eastern Associated Coal Corp. v. Secretary of Labor, PITT 76X203; Florence Mining Co., Helen Mining Co., Oneida Mining Co., North American Coal Corp. v. Secretary of Labor, PITT 77-15, 77-16, 77-17, 77-18, 77-19, 77-23; Alabama By-Products Corp. v. Secretary of Labor, BARB 78-153; Inland Steel Coal Co. v. Secretary of Labor, VINC 77-164 (disposition on the merits).

It was determined by unanimous vote of the Commissioners that Commission business required that these matters be scheduled for Commission action as soon as possible and that no earlier announcement of this action was possible.

CONTACT PERSON FOR MORE INFORMATION:

Joanne Kelly, 202-653-5632.

[S-298-79 Filed 2-9-79; 12:07 pm]

[6735-01-M]

11

FEBRUARY 8, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10:00 a.m., February 14, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTER TO BE CONSIDERED:

It was determined by unanimous vote of all Commissioners that Commission business required that a meeting be held on this matter and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION:

Joanne Kelley, 202-653-5632.

[S-299-79 Filed 2-9-79; 12:07 pm]

[6210-01-M]

12

FEDERAL RESERVE SYSTEM (Board of Governors).

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the FEDERAL REGISTER on February 6, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, February 14, 1979.

CHANGES IN THE MEETING: Deletion of the following open item from the agenda:

Proposals to implement Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act.
This item will be rescheduled at a later time.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: February 9, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[S-295-79 Filed 2-9-79; 11:42 am]

[7020-02-M]

13

[USITC SE-79-8B]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 6838-9, February 2, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Tuesday, February 13, 1979.

CHANGES IN THE MEETING: Change of time and date.

The meeting originally scheduled to be held on Tuesday, February 13, 1979, has been rescheduled to begin at 10 a.m., on Wednesday, February 14, 1979. There are no other changes to the agenda for that date.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-284-79 Filed 2-9-79; 10:20 am]

[7020-02-M]

14

[USITC SE-79-9]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, February 22, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agenda
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: (a) Spindle adapters from the United Kingdom (Docket No. 555); and (b) Perchlorethylene from Belgium, France, and Italy (Docket Nos. 556, 557, and 558).
5. Any items left over from previous agenda.

Portions closed to the public:

6. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-293-79 Filed 2-9-79; 10:55 am]

[6820-35-M]

15

LEGAL SERVICES CORPORATION.

Legal Services Corporation—Meeting of the committee on Provision of Legal Services.

TIME AND DATE: 10 a.m., Friday, February 16, and Saturday, February 17, 1979.

PLACE: Marvin Center, George Washington University, room 405, 800 21st Street NW., Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Adoption of agenda.
2. Approval of minutes of the meeting of November 13, 1978.
3. Discussion of the Reginald Heber Smith Community Lawyer Fellowship Program.
4. Report in accordance with section 1007(h) of the LSC Act.
5. Other business.

CONTACT PERSON FOR MORE INFORMATION:

Dellanor Young, Office of the President, 202-376-5100.

Issued: February 7, 1979.

THOMAS EHRLICH,
President.

[S-301-79 Filed 2-9-79; 3:48 pm]

[7590-01-M]

16

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of February 12, 1979.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Wednesday, February 14 1:30 p.m.

1. Discussion of decision in S-3 rulemaking (approximately 1 hour, public meeting).
2. Briefing on NRC legislative proposals including siting and licensing and omnibus legislation (approximately 2 hours, public meeting).
3. Affirmation session (approximately 10 minutes, public meeting): (a) Amendment to 10 CFR 50, appendices G & H; and (b) Cochran FOIA appeal (78-A-6) (partial); postponed from February 8, 1979.

Thursday, February 15 9:30 a.m.

1. Initial briefing on draft report "Regulation of Federal Radioactive Waste Activities" (tentative) (approximately 1½ hours public meeting).
2. Briefing on use of WASH-1400 in licensing actions (Approximately 1 hour, public meeting).

1:30 p.m.

1. Tarapur discussion (approximately 1½ hours, closed—exemption 1) (continued from February 6).
2. Discussion of personnel matter (approximately 1½ hours, Chairman's conference room, closed—exemption 6).

Friday, February 16 9:30 a.m.

1. Time reserved for continuation of legislative proposals (if necessary) (approximately 2½ hours, public meeting).

ADDITIONAL INFORMATION: The following changes were made to items announced for the Week of February 5:

(a) Discussion of personnel matter—continued at 3 p.m. on February 7.
(b) Discussion of amendment to 10 CFR 73.55—postponed to February 8 at 3 p.m.
(c) Continuation of NRC legislative proposals—postponed to February at 1:30 p.m.
(d) Discussion of testimony before the House Foreign Affairs Committee—added on February 7 at 2:45 p.m. (closed—exemption 9).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

FEBRUARY 7, 1979.

[S-290-79 Filed 2-9-79; 10:20 am]

[4410-01-M]

17

PAROLE COMMISSION.

TIME AND DATE: 9 a.m., Thursday, February 15, 1979.

PLACE: Room 831, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed, pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 15 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

A. Ronald Peterson, Analyst, 202-724-3094.

[S-292-79 Filed 2-9-79; 10:53 am]

[7715-01-M]

18

POSTAL RATE COMMISSION.

TIME AND DATE: 9 a.m., February 14, 1979.

PLACE: Conference room, room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Office reorganization and personnel matters.

Closed pursuant to 5 U.S.C. 552b(c)(2)(6),

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, room 500, 2000 L Street NW., Washington, D.C. 20268, 202-254-5614.

[S-285-79 Filed 2-9-79; 10:20 am]

[7910-01-M]

19

RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 4095, January 19, 1979.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, January 30, 1979; 10 a.m.

CHANGE IN MEETING: Matters five and six are added to the previously announced agenda.

MATTERS TO BE CONSIDERED: Board meeting concerning:

5. Recommendation for finding of excessive profits: Stelma Inc., successor-in-interest to a 1960 Delaware corporation of the same name, fiscal years ended March 31, 1968 and 1969 and May 8, 1969.

6. Recommendation for denial of contractor's request for special accounting agreement: National Steel and Shipbuilding Co., fiscal year ended December 31, 1974.

STATUS: Closed to public observation.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C., 202-254-8277.

Dated: February 5, 1979.

HARRY R. VAN CLEVE,
Acting Chairman.

[S-291-79 Filed 2-9-79; 10:53 am]

federal register

TUESDAY, FEBRUARY 13, 1979

PART II.

ENVIRONMENTAL PROTECTION AGENCY

1983 AND LATER MODEL YEAR HEAVY-DUTY ENGINES

Proposed Gaseous Emission Regulations

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 86]

[FRL 1024-4]

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Engines

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes more stringent hydrocarbon and carbon monoxide emission standards, and establishes an assembly line testing program and nonconformance penalty system for 1983 and later model year heavy-duty (HD) gasoline-fueled and diesel engines as mandated by the Clean Air Act Amendments of 1977. Substantial changes are also being proposed to the emission test procedures, the definition of useful life, and the procedures used to verify the durability of emission control systems over their useful life.

Although there have been gains in control of air pollution, many air quality control regions still fail to meet the ambient air quality standards. Heavy-duty vehicles contribute a significant percentage of the total hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NOx). For this reason the Clean Air Act Amendments of 1977 have mandated a 90% reduction from 1969 baseline gasoline levels of HC and CO pollutants. The amended Clear Air Act also requires a more stringent NOx standard for 1985, which will be proposed at a later date.

This proposed regulatory action will result in significant reductions in gaseous emissions from heavy-duty vehicles, particularly from gasoline-fueled vehicles. If promulgated as final rule, this action is anticipated to reduce HC emissions up to 2 tons per vehicle and CO emissions up to 39 tons per vehicle for HD gasoline-fueled vehicles. HD diesel vehicles will also experience up to one ton per vehicle reduction in HC. In the major urban regions evaluated (48 for HC and 26 for CO), reductions of up to 11% for mobile source HC emissions and up to 21% for mobile source CO emissions will be realized. These reductions correspond to urban air quality improvements of 2% for oxidants and 6% for carbon monoxide.

DATES: Proposed effective date is Dec. 1979. Comments received on or before the first normal business day, June 13, 1979, will be considered.

PUBLIC HEARING: A public hearing on the provisions of the proposed regulations will be convened approximately May 14, 1979. The time and place of the public hearing will be announced later in the FEDERAL REGISTER. Pursuant to Section 307 of the Clean Air Act, the record of the public hearing will be kept open for 30 days following the close of the hearing.

ADDRESS—PUBLIC COMMENT: Interested persons may submit written comments to the: Administrator, Environmental Protection Agency, Attention: Director, Emission Control Technology Division, 2565 Plymount Rd., Ann Arbor, MI 48105. Four copies of the comments are requested but not required.

FOR FURTHER INFORMATION CONTACT:

Mr. Chester J. France, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymount Road, Ann Arbor, Michigan 48105, Telephone: (313) 668-4338.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Heavy-duty (HD) engine exhaust emissions (gasoline-fueled vehicles only) were first regulated by the State of California in 1969. A year later, EPA adopted the California emission standards and test procedures and added exhaust and smoke emission standards for diesel engines. The emission standards for HC and CO were lowered by California in 1972. California further modified their HD emission regulations in 1973 by changing the gasoline test procedure to a mass measurement basis, adding a standard for oxides of nitrogen emissions, and establishing diesel test procedures and standards. EPA adopted the 1973 California regulations for the 1974 model year. EPA also included a peak smoke level standard for diesel engines. California has since lowered the standards once in 1975 and once in 1977.

In 1977, EPA promulgated more stringent HD emission standards and also adopted a number of test procedure refinements to improve the test procedure's measurement accuracy and test repeatability. These new standards and modified test procedures apply to 1979 and later model year HD vehicles (gasoline and diesel) and are currently in effect.

Section 202(a)(3)(A) of the amended Clean Air Act (42 U.S.C. 7521(a)(3)(A)) now requires a 90% reduction from 1969 gasoline baseline levels in HC and CO emissions effective in the 1983 model year. THe Clean Air Act, as amended in August 1977, also requires a 75% reduction (from 1973 gasoline baseline levels) in NOx effective in 1985, but this new standard will be promulgated at a later date.

For the past several years, EPA has been developing transient test procedures that are relatable to actual in-use emissions. Based on analysis of the current steady-state procedures (9-mode for gasoline and 13-mode for diesel) EPA has determined that the current emission test procedures are incapable of insuring that the reductions mandated by the Clean Air Act are achieved in actual use. This action proposes standards that represent 90% reductions (from baseline levels) in HC and CO emissions. It is proposed to measure emissions using EPA's newly developed transient engine test procedure.

In conjunction with these changes EPA is proposing assembly-line testing and non-conformance penalty regulations as required by the Act. Other significant changes which include redefinition of useful life, revised durability requirements, parameter adjustment, and allowable maintenance are also being proposed.

An attempt has been made in this rulemaking action to consolidate several significant regulations (e.g., test cycles, parameter adjustment, durability procedures, and Selective Enforcement Auditing (SEA)). The package represents what EPA feels is a comprehensive "compliance strategy" necessary to achieve the emission reductions mandated by the Clean Air Act. In the past, EPA has implemented similar regulations, for light-duty vehicles, however, it was done with numerous rulemaking actions. Not only has this approach been wasteful of resources, but has at times confused the manufacturers. With respect to this rulemaking action, the manufacturers will know from one rulemaking action what EPA's long-term requirements will be. Moreover, they will have an opportunity to provide meaningful comments on the interdependence of the various elements of the package as they relate to the complete compliance strategy.

PROPOSED CHANGES

1. EMISSION STANDARDS

Standards which represent a 90% reduction from 1969 baseline levels are proposed for both hydrocarbon (HC) and carbon monoxide (CO) emissions. These standards will apply to 1983 and later model year heavy-duty gasoline-fueled and diesel engines over their full useful like. Exact numerical standards are not specified in the proposed regulations, but will be in the final action. EPA has not completed its baseline testing of 1969 gasoline engines and can only quote approximate standards at this time. The approximate HC and CO standards for 1983, derived from a sales weighted average of the baseline engines tested to date, are 1.4 grams per brake horsepower-

hour (g/BHP-hr) HC and 14.7 g/BHP-hr CO. Based on a statistical analysis of the baseline data gathered to date, EPA has determined, with reasonable confidence, that the final standards will not be less than .76 g/BHP-hr for HC and 11.4 g/BHP-hr for CO. EPA will not finalize standards below these lower limits without reproposing. Although the approximate standards may change pending completion of baseline testing, EPA does not expect substantial changes to occur.

The above approximate standards were developed from baseline testing of 12 1969 HD gasoline engines. The 12 engines tested so far, represent approximately 58 percent of the gasoline engine sales for 1969. Individual test results for each baseline engine can be found in Appendix A of the Regulatory Analysis. The 1969 baseline testing is expected to be finished by May 1979. The goal is to test enough engines to represent at about 80 percent of 1969 sales. This goal can be achieved by testing 20 to 30 engines. Additional engines will be tested as time permits in order to obtain data from several engines of the same type in the case of the most popular engine models. EPA will continue to update the regulated industry concerning results of its baseline testing.

It is not EPA's intent to substantially increase the stringency of the NOx standard for 1983. EPA will derive the NOx standard from transient test results of 1979 and later model year HD gasoline engines. EPA plans to base such a standard on the sales weighted average of a representative 1979 gasoline engine sample. Manufacturers are invited to submit their ideas on how to derive such a standard. A NOx standard that will achieve at least a 75 percent reduction will be proposed for 1985 in a later Notice of Proposed Rulemaking (NPRM).

Separate HC and CO idle standards representing 90% reductions from 1969 gasoline levels are also being proposed under the authority granted EPA in Section 202(a) of the Clean Air Act (as amended August 1977). Specific values for the idle standards are not contained in the proposed rule itself, but will be in the final rule. The approximate standards, based on the engines tested to date, are 1400 ppmC for HC and .55 percent for CO. These standards are in terms of raw exhaust gas concentrations. As mentioned before EPA will update the manufacturers as further results from the 1969 baseline testing are obtained.

EPA has determined statistically that it is unlikely that the additional baseline testing will result in idle standards less than 530 ppmC for HC and .30 percent for CO. The final idle standards are not expected to change substantially from the approximate idle standards given above. EPA will not finalize idle standards below these lower limits without reproposing.

The chief reason EPA is proposing HC and CO idle standards is that the idle mode has been identified as the largest single mode of heavy-duty operation. Based on heavy-duty truck operational data collected in Los Angeles and New York City, idle conditions constitute approximately 25% of a truck's operation (32% in New York City and 17% in Los Angeles). In addition to being such a significant portion of overall heavy-duty truck operation, it is important to control idle CO emissions since idle operation will occur in situations that involve fairly direct exposure of people, i.e., local "hot spots". Examples of such situations include crosswalks at intersections, loading dock areas, and bus stops in congested traffic.

EPA has determined from light-duty emission test results that idle HC and CO levels are related to engine displacement and idle speed. The need for expressing the idle standards for heavy-duty engines as a function of engine displacement and idle speed is being evaluated at this time. If a need is identified for expressing the standards in this manner, EPA will act accordingly in the final rule.

Finally, EPA proposes to control HD diesel crankcase emissions. Statutory authority for proposing such controls is provided under Section 202(a) of the Clean Air Act. The current HC emission regulations place controls on crankcase emissions from gasoline-fueled engines, but not from diesel engines. It's inappropriate that diesel engines continue to be excluded from regulations which apply to a competing engine. In addition to being a source of HC and CO emissions, recent testing indicates the possible presence of various nitrosamines in diesel crankcase gaseous flow (refer to EPA report titled "Diesel Crankcase Emissions charaterization, Final Report of Task No. 4, Contract 68-03-2196," May 1977 for description and summary of test results). Nitrosamines are a very strong carcinogen in animals and strongly suspected to be carcinogenic in humans.

The same testing also indicated that the particulate emissions from diesel crankcase flow consisted mostly of lubricating oil. Recent work by other researchers has indicated that whereas fresh lubricating oil appears to be nonmutagenic, it quickly becomes mutagenic with use. Therefore, it is very likely that diesel crankcase emissions could be mutagenic (as measured by Ames testing) soon after each oil change. (For further information on "Ames testing" refer to the article titled "Methods for Detecting Carcinogens and Mutagens with the Salmonella/Mammalian—Microsome Mutagenicity Test," by B. N. Ames, J. McCann, and E. Yamasaki, *Mutation Research*, 31 (1975), pgs. 347-364.)

EPA estimates at this time that crankcase emissions can be controlled at minimal cost and within the available lead time. However, EPA is soliciting comments from the manufacturers concerning the costs and feasibility of controlling diesel crankcase emissions beginning with the 1983 model year. If it is determined from the comments to this NPRM that control of crankcase emissions is not practical for 1983, then EPA will propose this requirement together with the Clean Air Act mandated NOx emission reductions (applicable for 1985 and later model years).

2. TEST PROCEDURES

EPA is proposing new test procedures for determining gaseous exhaust emissions from heavy-duty engines (gasoline-fueled and diesel). The major change being proposed is that the current steady-state test cycles (9-mode for gasoline and 13-mode for diesel) are being replaced by transient test cycles. Significant modifications are also being proposed for the emission sampling techniques. The current optional use of the 1974-1978 test procedures by low volume manufacturers will be disallowed after 1982. EPA proposes that the current smoke measurement procedure and standards be retained intact.

The need for the new transient test procedures is thoroughly discussed in Chapter VI, Alternate Actions, of the Regulatory Analysis. Fundamentally, EPA considers the existing steady-state test procedures inadequate for assuring that heavy-duty vehicles achieve the same reductions in on-road emissions as they do in the laboratory. As the emission standards become more stringent the motivation to design around the test procedures will be increased. The emission control techniques used to obtain low emission levels on the steady-state procedures may not achieve the same degree of control on the transient test procedure, nor in actual on-road use. In fact, even at current levels, the steady-state procedures do not provide an accurate assessment of true, real world reductions. For these reasons and others discussed in the Regulatory Analysis, EPA is proposing the numerous test procedure changes.

The need for the transient test has been clearly demonstrated for gasoline-fueled engines, however for diesel engines the need is not as obvious. EPA recognizes that diesel HC and CO levels are already quite low, and in most cases they are already close to the proposed 90% reduction levels. This fact raises a question concerning

the need for the transient procedure for diesel engines. However, under another program, EPA is developing regulations for the control of heavy-duty particulate emissions (required by Section 202(a)(3)(A)(iii) of the Clean Air Act as amended in 1977). These procedures are planned to be implemented in 1983 and will require a transient test. Since acquisition of transient test facilities are a long lead time item, it is imperative that the transient procedure be proposed in this action. Otherwise, the implementation of the heavy-duty diesel particulate regulations in 1983 will be seriously jeopardized. Finally, the required 75 percent reduction in NOx for 1985 will be difficult for diesel engines to meet. It is anticipated that at such low NOx levels, a transient test will be necessary to insure that engines achieve 75% reductions in on-road emissions; it is also imperative that the manufacturers have the test procedure finalized at the earliest possible time so as to allow them to proceed with the development of control technology necessary for compliance with the 75% NOx reduction requirements.

The proposed transient test cycles were developed by EPA from actual in-use truck operational data collected in New York City and Los Angeles. A different cycle for both gasoline-fueled and diesel engines is included in the proposed rule. Each transient cycle is specified by a second-by-second listing of pairs of normalized engine speed and horsepower values. The listings for the cycles can be found in Appendix I of the regulations.

The first step in the test sequence is the generation of the maximum torque curve. The experimentally derived maximum torque curve is then used to unnormalize the test cycle into an acutal speed-power cycle. After the maximum torque curve generation the engine is allowed to soak a minimum of 12 hours and a maximum of 36 hours. The engine is then started cold, operated over the test cycle, shut-off for a 20 minute hot soak, restarted again, and operated over the test cycle. The idle emission test procedure (Subpart P) can be conducted at the conclusion of the transient test, if desired. Cycle run validation requirements and tolerances are specified in the procedures.

Under the current test procedures mass emissions are determined from raw exhaust gas analysis. This sampling technique is used because the emissions are measured during periods when exhaust gas composition and flow are not changing. However, during the transient test cycle exhaust gas composition and flow is changing continuously. To measure mass emissions under these conditions it is proposed to dilute the exhaust emissions with ambient air and collect a continuous proportional sample for both the cold and hot start tests. A constant volume sampler (CVS) is required to obtain a continuous proportional emission sample. Emissions are required to be bagged separately over the cold start test and hot start tests. HC emissions from diesel engines, though, are not baggged, but are continuously sampled and analyzed during the sample periods using heated sample lines and a heated flame ionization detector. The dilute samples collected in the bags are analyzed using a flame ionization detector for HC, a non-dispersive infrared analyzer for CO and CO_2, and a chemiluminescence analyzer for NOx.

The total volume of dilute sample is measured during the test, and is used to calculate the mass of each pollutant emitted during the sample period. To enable a determination of brake-specific emissions (i.e., g/BHP-hr), the useful work output during both test phases (cold start and hot start test) is measured. The mass emissions for each pollutant is weighted appropriately for the number of cold and hot start trips in a day and is divided by the similarly weighted work output (brake horsepower-hour). The resultant g/BHP-hr pollutant value represents the brake-specific emissions from an average urban trip for a HD truck.

The proposed idle test procedure (Subpart P) includes very general analytical and sampling system requirements which are different from the transient test requirements since the measurements can be made directly from the exhaust without dilution. These requirements of course allow the use of those systems described in Subparts D and N. If the Subpart N analytical system is used, an additional CO_2 analyzer is required to measure CO_2 concentrations in the raw exhaust. This CO_2 measurement is necessary to accurately determine the dilution factor during the idle mode. Additional flexibility is also allowed in running the idle test itself since it is conducted after the engine is at normal operating temperature and therefore would be less sensitive to preconditioning than the cold start, transient test. In addition, the flexible preconditioning procedure and less restrictive instrumentation specifications for the idle procedure permit the straightforward adoption of regulations under section 207(b) of the Act, if such regulations become necessary. For example, wide ambient temperature ranges and simple engine warm-up procedures are specified.

The HC and CO emissions measured during the idle test are not expressed in the units used for the transient emission test results (i.e., g/BHP-hr). Instead, hydrocarbon emissions are expressed in parts per million (ppm) and carbon monoxide emissions are expressed in percent.

Organizationally, the proposed test procedures (Subpart N) are arranged in a format similar to the light-duty vehicle (LDV) emission regulations. In fact, the following sections are in common with the LDV emission regulations § 86.1309, § 86.1311, § 86.1313, § 86.1314, § 86.1319, § 86.1321, § 86.1322, § 86.1323, § 86.1324, and § 86.1340.

3. REDEFINITION OF "USEFUL LIFE"

EPA is proposing to amend the current definition of "useful life" for heavy-duty engines under the authority given EPA in Section 202(d) of the Clean Air Act. For gasoline-fueled HD engines the useful life is presently defined as a period of use of 5 years or 50,000 miles of vehicle operation or 1,500 hours of engine operation (or 1,500 hours of engine dynamometer operation), whichever occurs first. For diesel HD engines, useful life is presently defined as a period of use of 5 years or 100,000 miles of vehicle operation or 3,000 hours of engine operation (or an equivalent period of 1,000 hours of engine dynamometer operation), whichever occurs first. Both of these definitions are unrealistically short. The amendment would bring the definition of useful life into closer agreement with the periods of use actually seen by heavy-duty engines. Specifically, the useful life for heavy-duty engines would be defined as the average period of use up to engine retirement or rebuild, whichever occurs first. The manufacturer would be responsible for making the useful life determination(s) for its engines.

It is further proposed that the manufacturer make two useful life related statements on the engine label and, with more detail, in the owner's manual. The average useful life (in hours or miles) as determined by the manufacturer shall be stated, as well as a statement of compliance with the emission regulations for the useful life of the engine.

4. REVISED DURABILITY TESTING REQUIREMENTS

EPA proposes to allow each manufacturer to design the test procedure used to determine emission deterioration factors (DFs) for its engines. Manufacturers would be required to state that their procedures are designed and conducted in accordance with good engineering practice and that the procedures account for representative emission deterioration processes. Manufacturers would submit descriptions of the test procedures used, the data collected and the resultant deterioration factors for each engine family control system combination.

The above proposal would apply *only* to engine family-control system combinations seeking initial certification. For a family-system combination eligible for carry-over under current regulations (i.e., one which has not been significantly redesigned from the previous model year(s)), EPA proposes that manufacturers be required to derive deterioration factors from engines tested via in-chassis, on-the-road service accumulation. The manufacturers would be required to initiate in-chassis service accumulation within three months after the engine(s) in question go into production. The certificate of conformity would become invalid if the manufacturer fails to meet this requirement. EPA will retain the authority to make engine family determinations to discourage the manufacturers from creating "new" engine families each year by making minor engine modifications. By creating new families each year the manufacturers could conceivably avoid use of deterioration factors based upon the in-chassis service accumulation requirements.

EPA will waive the requirement for in-chassis service accumulation for 1983 and 1984 if the manufacturer states in its application for certification that an engine family-control system combination (for which it seeks an initial certificate of conformity for 1983 or 1984) will not be produced past the 1984 model year. EPA is allowing this waiver because it is likely that the manufacturers will be employing different or modified emission control systems on their engines in 1985 to meet the mandated reductions in NOx emissions. This waiver provision will not be available after 1985.

A minimum of three engines per family would be required to undergo in-chassis service accumulation testing. The service application of the vehicle shall be typical of commercial or consumer applications for the engine/vehicle combination. The minimum guidelines the manufacturer is required to follow are:

(1) a minimum annual mileage of at least 15,000 miles or 10 percent of the useful life mileage, whichever is greater, must be accumulated, and

(2) no more than 40,000 miles or 40 percent of the useful life mileage, whichever is greater, can be accumulated in any one year.

After 30,000 miles are accumulated, the engine would be emission tested and an in-chassis deterioration factor would be derived by linear extrapolation over the full useful life. This newly derived deterioration factor would then supersede the initial year's deterioration factor. As more miles are accumulated and until the useful life is reached, the manufacturer would perform emission tests in sufficient number to insure accurate assessment of the deterioration. The additional emission results are then used to update the in-chassis DF on a yearly basis.

EPA is proposing that the deterioration factors be employed as multiplicative factors, rather than as additive factors (being used in current procedures) to account for deterioration in emission control performance with use and time. Theoretical considerations and empirical studies do not unequivocably support use of multiplicative over additive deterioration factors, or vice versa. However, EPA's position is that for catalyst-equipped engines there is more technical justification for preferring the use of multiplicative factors over additive factors than for the reverse since catalyst systems reduce emissions by a given percentage regardless of input levels. Multiplicative factors are presently used for light-duty vehicles and light-duty trucks for this reason. Since gasoline-fueled engines capable of meeting the proposed standards will include catalysts, EPA is proposing the use of multiplicative factors for all heavy-duty engines beginning in 1983.

5. PARAMETER ADJUSTMENT

EPA proposes to amend the certification procedures to permit the Administrator to adjust or require manufacturers to adjust certain previously identified engine parameters to settings anywhere within the physical limits of adjustment for the parameter(s) in question. This provision is also included in the proposed Selective Enforcement Auditing (SEA) and Production Compliance Auditing (PCA) regulations. The authority to establish such regulations is granted to EPA in Sections 202, 206, and 301 of the Clean Air Act. The parameters that will be initially subject to these requirements will be the same as those in the recently promulgated light-duty vehicle parameter adjustment regulations (a complete copy of the light-duty parameter adjustment rulemaking package can be found in the Public Docket pertaining to this NPRM (No. OMSAPC-78-4)): idle fuel-air mixture, idle speed, initial spark timing, and choke valve action. Any other parameter which is physically capable of being adjusted, may significantly affect emissions, and was not present on engines of the same engine family in the previous model year may also be subjected to adjustment. Other parameters which were present on engines of the same engine family in the previous year may be added to the list of four parameters given in this paragraph, but only with sufficient lead time notice to the manufacturers.

These proposed requirements, which are identical to those promulgated recently for light-duty vehicles, will encourage manufacturers to design engines to be less susceptible to in-use maladjustment. Such maladjustment is capable of causing in-use emissions to be substantially higher than allowed by the standards. EPA does not have test data which indicate how serious this problem may become for heavy-duty vehicles with the use of advanced emission control technology. However, there is no reason to believe that the degree of HD in-use maladjustments will be much different than has been the case with catalyst equipped light-duty vehicles and light-duty trucks. Based on this experience with catalyst technology, EPA expects that the relative impact of this proposed action will be similar to those projected for light-duty vehicles and light-duty trucks. (For additional information refer to the light-duty parameter adjusdtment rulemaking package contained in Public Docket No. OMSAPC-78-4.) EPA solicits comments on EPA's judgment in this regard. In particular, if a manufacturer feels that because of some difference in the use or maintenance of heavy-duty vehicles, emission-related parameters will not be adjusted and set to specifications other than the manufacturer's, then the rationale and/or data to support this judgement is requested. The proposed parameter adjustment provision will help ensure that the 90% reductions in HC and CO mandated by statute are actually achieved by in-use engines.

6. ALLOWABLE MAINTENANCE

These regulations include definitions for non-emission related maintenance and emission-related maintenance. (These definitions and the allowable maintenance provisions described below are being proposed under the statutory authority granted by the Clear Air Act in Section 207(c)(3)(A)) and 206(d). The definitions are as follows:

"Non-emission related maintenance" means that maintenance which does not substantially affect emissions and which does not have a lasting effect on the deterioration of the vehicle or engine with respect to emissions, once the maintenance is performed at any particular date.

"Emission-related maintenance" means that maintenance, which does substantially affect emissions, or which is likely to have a lasting effect on the deterioration of the vehicle or engine with respect to emissions, even if the maintenance is performed at some time other than that which is recommended.

A replacement of the air cleaner would be an example of non-emission related maintenance. A dirty air cleaner may affect emissions to some extent by richening the fuel-air mixture, but

the effect would not be expected to be a large one. The effect of a dirty air cleaner could also be completely reversed by replacement with a clean air cleaner. A dirty air cleaner should not cause any component to be permanently damaged.

Spark plug replacement would be an example of emission-related maintenance, since a malfunctioning spark plug can greatly increase hydrocarbon emissions. A malfunctioning spark plug can also cause catalyst activity to deteriorate at a faster rate than normal and such deterioration would not be reversed by replacement with a good spark plug.

These regulations also include provisions limiting the amount of emissions-related maintenance which can be performed on durability vehicles. These regulations limit emissions-related maintenance to that which is technologically necessary and also has a reasonable likelihood of being performed in-use. Included in the provisions are minimum mileage intervals for the maintenance of emission-related components. EPA has determined that these intervals are technologically feasible and that shorter intervals are not technologically necessary. The manufacturer will still need to show that his emission-related maintenance is technologically necessary, even if these intervals are "longer" than the minimum intervals included in the provisions. EPA believes that these provisions are necessary to help insure that in-use emissions do not exceed the standards due to manufacturers using emission control technology which require extensive maintenance and then not having such maintenance performed. No costs for these provisions have been included in the regulatory analysis because EPA believes that the savings due to decreased maintenance requirements will pay for any first cost increases incurred due to these limitations.

7. SELECTIVE ENFORCEMENT AUDITING

As a further step to insure HD engines achieve the mandated emission reduction in the real world, EPA is proposing Selective Enforcement Auditing (SEA) regulations (see Subpart K). Selective Enforcement Auditing (SEA) is emission testing performed on a sample of heavy-duty engines coming off the assembly line to determine whether they conform to the regulations under which their respective certificates of conformity were issued.

The authority to conduct SEA testing is contained in Sections 206(b) and (g) of the Clean Air Act. Section 206(b) authorizes the Administrator to test, or to have manufacturers test, new production motor vehicle engines to determine whether the engines conform to the regulations with respect to which a certificate of conformity was issued. The Clean Air Act Amendments of 1977 added Section 206(g), which requires testing of heavy-duty production engines as necessary to determine the percentage not in compliance with the regulations with respect to which a certificate of conformity was issued.

An SEA audit is initiated by a test order to the engine manufacturer. The test order will be confined to a single engine configuration. Each manufacturer will have a preliminary limit on the number of test orders with which it has to comply each year based on projected annual sales.

The manufacturer is required to test the specified engines or to provide the engines to EPA for Agency testing. EPA Enforcement Officers are authorized to enter the manufacturer's facilities to monitor SEA-related activities, either through the consent of the manufacturer or, if consent is refused, under the authority of a warrant or court order in accordance with the Supreme Court's decision in Marshall v. Barlow's, Inc. (98 S.Ct. 1816 (1978)). The manufacturer is also required to retain records related to the SEA audits it conducts and, if the manufacturer has its own assembly-line testing program, to report test results from such a program to the EPA on a quarterly basis.

The sampling plans and decision criteria for SEA are based on an Acceptable Quality Level (AQL) of 10%. This AQL would provide assurance that all engines meet applicable standards after adjustment for deterioration with only 10% allowed to exceed standards to provide for test variability and isolated instances of nonconformity. (Any engine that failed the initial test would be require to pass a subsequent test before it could be sold.) This is consistent with the requirement of the Clean Air Act that every engine be warranted to meet emission standards throughout its useful life.

A 10% AQL also was proposed for the SEA program for light-duty vehicles (39 FR 45360 (1974)). In that proposal, emission standards for light-duty vehicles had already been fixed, and comments on the proposal asserted that adverse economic repercussions could occur to the light-duty vehicle industry by immediately imposing a 10% AQL. Under the production practices of the industry in effect at that time, production was not geared so that all manufacturers of light-duty vehicles would comply with emission standards, but so that the total production of light-duty vehicles would meet standards on the average. Thus, a 40% AQL was adopted in the final regulations to avoid an unreasonable economic impact on the industry (41 FR 31422 (1976)).

In this NPRM, EPA is proposing a 10% AQL as part of a total compliance strategy for heavy-duty engines. EPA believes that a 10% AQL can be met within the costs estimated for this proposed action, and that such costs should not place an unreasonable economic burden on the manufacturers.

The test order will specify the manner and location of the selection of test engines. Since the sampling plans are designed to be "sequential" in the sense that a decision can be made on compliance with the AQL after each engine is tested (a minimum number of engines must be tested), the test engines can be selected in several ways: one at a time as required to keep the audit progressing, a large group over a short period of time, or a small group on a daily basis.

The manufacturer will be permitted to "break in" engines before testing, up to a maximum service accumulation limit of 125 hours. The emission measurements will then be performed according to the test procedure described in Subpart I, N and P. The results obtained will be adjusted to be in accordance with the deterioration factors developed during the certification process to assure that the engines are in conformance with the regulations under which their certificate of conformity was issued. The manufacturer is expected to complete at least two tests per day. If a manufacturer can be classified as a "low-volume manufacturer," as defined in Subpart K, it is required to complete only one test per day.

Passing or failing an SEA audit is determined by testing individual engines consecutively until the number of failing engines, relative to the total number of engines tested to that point, corresponds to the pass or fail number specified in the decision rule for the applicable sampling plan. Classifying individual engines as either passing or failing the SEA emissions test, rather than examining their respective emission levels actually measured, reflects the "attributes" rather than a "variables" decision-making approach of the SEA sampling plans. The choice of an "attributes" approach is based primarily on current uncertainty regarding the characteristic distribution of emissions throughout the population of heavy-duty production engines.

Failure of an SEA audit may result in suspension or revocation of the certificate of conformity for the test configuration. The certificate can be reinstated only after the manufacturer demonstrates compliance through additional audit testing following implementation of a design or quality control change on the affected configura-

tion. The follow-up audit, however, is conducted according to a different sampling plan designed to reduce the "consumer's risk" that the manufacturer might pass the audit when it is in fact not complying with the AQL. In the case of any suspension or revocation of a certificate arising from an SEA failure, the hearing provisions of Subpart K allow the manufacturer to dispute the Agency's decision on the basis of application of the sampling plans or the manner in which emission tests were conducted.

These regulations will permit heavy-duty engines to be certified, even when their emissions as measured during certification testing, exceed the HC and CO standards. In that event a certificate of conformity would be issued only as long as the measured emissions do not exceed maximum levels, termed "upper limits", which EPA would establish above the emission standards for the two pollutants. If such engines are certified above the standards, but below the "upper limit," the manufacturer will be subjected to an SEA (using the follow-up audit sampling plans as described in the previous paragraphs) and if necessary, a Production Compliance Audit (PCA) to establish the nonconformance penalty. (See the following section on Production Compliance Auditing and Nonconformance Penalties.) If upper limits are set for the 1983 standards for HC or CO (or both), several decisions could be made as a result of an SEA audit: the test configuration passes with respect to the standard, fails with respect to the standard but not with respect to the upper limit, or fails with respect to the upper limit. In the second case, if the manufacturer did not wish to institute a change to rectify the nonconformity, it could avoid a certificate suspension or revocation by electing to pay a nonconformance penalty on the basis of Production Compliance Audit testing.

8. PRODUCTION COMPLIANCE AUDITING (PCA) AND NONCONFORMANCE PENALTIES

In Section 206(g), the Clean Air Act Amendments of 1977 also added a requirement that a certificate of conformity be issued and remain in effect for engines exceeding an emission standard, yet within a specified upper limit, if the manufacturer of these engines paid a nonconformance penalty based in part on the extent to which those engines are exceeding the standard(s). Therefore, a Production Compliance Auditing (PCA) program and a nonconformance penalty system is also being proposed in Subpart K. Production Compliance Auditing is emission testing performed on a sample of heavy-duty engines to determine the "compliance level." As indicated above, a PCA would be conducted when a manufacturer elects to pay a penalty upon failure of an SEA in lieu of bringing the engines into compliance. The compliance level established is in turn used to determine the amount of the nonconformance penalty that will be imposed on the manufacturer.

A PCA is not initiated by a test order but rather upon a request by a manufacturer. The terms of the test order initiating the original failing SEA would still apply. The aspects of SEA testing relating to testing by EPA. maintenance of records, entry and access of Enforcement Officers, engine selection and break-in, test procedures, test per day requirements, and application of deterioration factors still apply to PCA testing. Engines tested during a PCA are not classified as "passes" or "failures." Instead, the emission test results obtained are used to make a point estimate of the 90th percentile of the data distribution. This point estimate is the "compliance level."

The PCA sampling plans indicate the number of engines that must be tested to determine the compliance level. The plans also allow a determination as to whether the configuration is in compliance with the AQL at the upper limits (or at the standard for a pollutant that has no upper limit). If the PCA is failed with respect to the upper limit (or the standard if there is no upper limit) the same sanctions of certificate suspension or revocation may be imposed as in SEA testing. The manufacturer can dispute the Agency's sanction decision on the same bases as described in the SEA program and request a hearing. If the PCA is conducted and no fail decision is reached, a nonconformance penalty will be imposed.

Two alternative approaches to calculating the nonconformance penalty were considered. Both approaches are based on incremental costs, i.e., those avoided by an engine's not meeting emissions standards. Such costs include those borne by the manufacturer, such as the variable costs associated with each engine and amortization of fixed costs, and those borne by the end-user, such as increased fuel consumption and maintenance requirements.

In the first approach considered, the "actual cost" approach, the penalty is equal to the full cost (including the indirect cost of any performance degradation borne by consumers) of bringing a particular nonconforming engine configuration into compliance with the standards. The underlying philosophy is that a potential purchaser ought to be indifferent, in economic terms, to purchasing the nonconforming engine with its price increased to reflect the penalty and the same engine brought into conformance. The penalty will automatically increase with the degree of nonconformity, since the cost of bringing an engine into compliance generally increases with the degree of nonconformance. After the initial penalty has been set, the penalty can be increased by a fixed percentage over subsequent time periods so as to create incentives for the development of production engines which meet standards.

In the second approach, the penalty is based on the "marginal cost" of reducing emissions for a "typical" engine to bring it into compliance with the standards. As one moves towards the standard from higher emission levels, it generally becomes more expensive to remove each incremental unit of emissions, although it is still cost-effective to do so. The most expensive incremental reduction is to move to the standard from a level just above the standard; the cost of doing this is referred to as the "marginal cost" of compliance at the standard. The nature of this approach is such that it can result in penalties significantly higher than the cost of bringing a particular engine into compliance with the standards. These generally high penalties should provide a substantial degree of protection to the conforming manufacturer, as required by the Act: "Such penalties * * * shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction. * * *" (Section 206(g)(3)(E)). Like the "actual cost" approach, the penalty assessed will escalate over time to provide an increasing incentive to conform.

A more thorough discussion of both alternative approaches to calculating the nonconformance penalty can be found in a paper in the rulemaking docket entitled "Nonconformance Penalties for Heavy Duty Engines." As described in this paper, both alternatives satisfy the three mandatory criteria for the nonconformance penalty required by the Act (Section 206(g)(3)(C), (D), (E)). However, they do differ significantly in the areas of equity, ease of administration and degree of emission reduction expected.

The Agency has chosen to use the "marginal cost" approach in its proposal because of the relative merits of this alternative compared with the cost-based approach. In the area of equity, the choice of one approach over the other may well depend upon how one defines "equity." The "marginal cost" approach is considered to be the more equitable alternative in the sense that engines with the same degree of noncompliance will incur the same penalty, regardless of type of manufacturer or the possibility that one may actually cost less to bring

into compliance than the other. In the area of administrative burden, the "marginal cost" approach has the decided advantage because it will not require extensive cost estimating and documentatin by the manufacturers and subsequent verification and auditing by the Agency. In the area of expected emission reductions, the "marginal cost" approach is again favored because it is set up to be economically advantageous to the manufacturer to comply with standards rather than to pay a penalty.

There is some question as to when nonconformance penalties should be applicable. Section 206(g)(1) of the Act states that a nonconformance penalty should be available "in the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under section 202(a) of this Act applies." However, the House Committee, which initially proposed the nonconformance penalty provision which eventually was adopted by Congress, indicated in its committee report that the nonconformance penalties would be used only in conjunction with "revised standards," i.e., revisions to the 1983 statutory-standards for HC and CO and revision to the 1985 statutory standard for NOx. (H.R. Rep. No. 95-294, 95th Cong. 1st Sess 275).

Congress indicated that revised standards were to be implemented if EPA determined that manufacturers would be unable to meet the statutory emission standards within the time frame provided in the Act. To ensure that standards would not be relaxed more than necessary in moving from statutory to revised levels, EPA was directed to set revised standards at levels based on the capability of the industry's "technological leader." A nonconformance penalty alternative was then to be made available to accomodate those "technological laggards" unable to meet established standards. By paying the nonconformance penalty, the laggards would be able to continue selling engines while improving their technology to the point where they could meet the standards.

EPA's position on the applicability of nonconformance penalties is that they should not be available until 1983 for HC and CO, and until 1985 for NOx, and then only if standards (either revised or statutory) are set so that technological laggards need to be accomdated. Since the interim standards that went into effect for the 1979 model year were set on the basis of technology currently available and one year was judged to be sufficient time to incorporate this technology into production engines, nonconformance penalties will not be available which the interim standards remain in effect.

A general formula for the nonconformance penalty has been proposed in these amendments. This formula is based on the emissions charge (marginal cost of compliance) approach. It is not possible to determine the actual dollar amount of the penalty at this time because the marginal cost of meeting the proposed 1983 standards have not been established.

Paragraph (g)(3) of Section 206 of the Clean Air Act sets five criteria for the establishment of a nonconformance penalty formula. One of these criteria is that the penalty be increased periodically, beyond the amount determined by the "marginal cost," to create incentive for the development of production engines which achieve the required degree of emission reduction. These proposed amendments establish a 25% increase in the penalties each model year. This value was selected on the basis of being a sufficient increase in the amount of the penalty to provide additional incentive to bring nonconforming engines into compliance, yet not so large an increase that it would preclude a manufacturer from selling noncomplying engines if it in fact required more than a year to bring them into compliance.

In the event that a nonconformance penalty is assessed against a particular engine configuration, the regulations provide that the penalty shall apply to the engines of that configuration produced since the beginning of the model year and all produced after the penalty has been set. If no changes have been made to the engine configuration up to the time of PCA testing (which establishes the penalty) and thereafter, the Agency has no reason to believe that engines other than those in the test sample will have emissions different from engines in the test sample. This assumes that the emissions performance of the configuration is consistent throughout the year so that the sample of engines selected during a PCA is representative of the entire year's production. As a result, the penalty must be paid on all engines of the noncomplying configuration.

The heavy-duty engine emission standards, as well as the upper limits for HC or CO, if any, will be finalized during the course of this relemaking. At this time EPA believes that the proposed standards are practical and achievable by all manufacturers. Therefore, no technological laggards need accommodating, no upper limit need be set and the nonconformahce penalty would not be available to the manufacturers. However, if the comments in response to this proposal support the need for nonconformance penalty provisions to accommodate any technological laggards, EPA will proceed to determine a marginal cost factor and establish an upper limit through an evaluation of information obtained from the comments and other sources. The upper limit will correspond to the lowest emission level which the Agency determines any technological laggard has the capability of achieving. Under that approach, no manufacturer would be forced to suspend engine production when the new standards go into effect. EPA would repropose nonconformance penalty provisions incorporating the calculated marginal cost factor and upper limit to ensure that the public would have adequate opportunity to comment on that portion of the regulations.

Heavy-duty engine manufacturers are encouraged to submit data on the cost of compliance with the proposed standards and with hypothetical standards more or less stringent than those proposed, including support documentation. Such data and documentation will be used in determining the marginal cost factor in the nonconformance penalty formula.

Anticipated Need for Inspection and Maintenance Programs

EPA anticipates that the proposed levels of HC and CO will require the use of catalyst emission control technology for gasoline-fueled engines. This type of emission control system is susceptible to significant in-use deterioration. The proposed parameter adjustment requirements and redefinition of useful life will aid in decreasing catalyst system deterioration, but the problem may still be serious. Therefore EPA expects that an inspection and maintenance (I/M) program will be necessary for in-use heavy-duty vehicles. The chief purpose of such a program would be to identify failed catalysts caused by improper maintenance and/or maladjustment(s) and consequently insure that the full benefits of the more stringent standards are achieved. The costs of an I/M program were included in the economic impact analysis of this proposed regulation. However, the regulations being proposed in this action do not include I/M requirements.

Lead Time and Feasibility

This notice of proposed rulemaking (NPRM) represents official notice that EPA intends to implement the statutory standards prescribed by Congress under Section 202(a)(3)(A)(ii) of the Clean Air Act as amended in August 1977 for the 1983 model year. Based upon information available at this time, EPA believes that sufficient lead time is available to acquire the necessary test equipment, modify test cells, develop and apply the necessary emission control technology and to con-

duct compliance testing by 1983. Therefore, EPA cannot make the findings under Section 202(a)(3)(C) necessary to permit consideration of revised standards at this time. However, manufacturers' comments on the feasibility of meeting the proposed standards will be considered in setting final standards. If revisions to the statutory standards are warranted, they will be made.

For the gasoline engine manufacturers, test equipment acquisition involves the procurement of CVS samplers, analytical equipment, and engine dynamometer modifications. Unlike most diesel manufacturers, the gasoline engine manufacturers are corrently using electric motoring dynamometers which can be modified for transient control without acquiring all new dynamometers. Based on recent EPA experience in these areas, total lead time for these actions is 10 months, with CVS procurement probably being the critical path item. All of these procurements can proceed simultaneously. If procurement of the required test equipment and modifications were initiated on January 1, 1980, test facilities would be operational by October 1980. Allowing 12 months for certification testing, a full 14 months of development time would be available between October 1980 and January 1982.

EPA anticipates that gasoline-fueled engines will require the use of catalyst based emission control systems to meet the proposed emission standards. For the most part, the HD manufacturers will be able to utilize the catalyst control technology currently used on ligh-duty vehicles and light-duty trucks. The light-duty catalyst systems are presently achieving percentage emission reductions in excess of those required for HD engines in 1983. Also, catalyst light-off during cold starts will be less of a problem for HD vehicles than for light-duty vehicles because HD vehicles have significantly fewer cold starts and thus have less emphasis in the test. EPA projects that catalyst durability may require some work by the HD manufacturers, since HD operation can be more severe than light-duty operation. The minimum of 14 months, after the acquisition of test facilities, available to the gasoline engine manufacturers for development efforts should be sufficient time to resolve final catalyst system integration and optimization problems. Considering the clearly established Clean Air Act mandate, the industry should already be pursuing catalyst development and durability work. Much of the work can be done using actual vehicles before the transient engine dynamometer test equipment is obtained. An additional year's development time is gained if this approach is used.

For the diesel engine manufacturers, test facility acquisition and modifications will take 10 months longer than for gasoline engine manufacturers because complete dynamometers rather than modifications will be required. The engine dynamometers currently used by the diesel manufacturers, eddy-current type, cannot be readily converted to transient operation. The additional time necessary for equipment procurement will reduce the time period available to the diesel manufacturer for development effort. However, to obtain more time, facility acquisition can be begun before promulgation of final rules. Some companies have already initiated plans to acquire new dynamometer systems.

The development time period is admittedly short for the diesel manufacturers, but they should not have significant developmental requirements to comply with the 1983 standards. Their engines are already close to compliance. EPA recognizes that the planned promulgation of the HD diesel particulate regulations for 1983 may alter the manufacturer's development requirements because there may be an interaction between the control of diesel particulates and the control of HC, CO and NOx emissions. If there is an interaction, the development effort required by the diesel manufacturers (to meet the proposed emission levels) could be increased. These potential interactions and possible lead time impacts are not quantified in this proposal, but will be considered when EPA proposes the HD diesel particulate regulations and standards.

The heavy-duty engine manufacturers have been aware of the Clean Air Act amendments since their adoption in 1977 and should already be working toward meeting its requirements. In addition, EPA has kept the manufacturers well informed during the last several years of its planned implementation of transient test procedures. Even assuming that the manufacturers do nothing until promulgation of final rules (assumed promulgation date is December 1979), EPA concludes that the proposed emission levels are achievable with already available emission control technology within the lead time existing.

The industry has traditionally argued that they cannot be expected to make major commitments toward compliance with a regulation until final regulations are promulgated. While it would be unreasonable to expect companies to order the numerous duplicate facilities required to run a full scale development and certification program prior to the promulgation of final regulations, EPA believes this notice of proposed rulemaking coupled with the amendments to the Clean Air Act provide a sufficient basis for initiation of the acquistion of several basic developmental test cells. While it is conceivable that minor changes could be made to the proposed test procedure as a result of public comments received in response to this notice, there is no reason to expect changes great enough to void the basic specifications used by EPA to establish its own dynamometer and CVS capabilities.

Economic Impact

EPA anticipates that gasoline-fueled engines will require oxidation catalyst systems and calibration changes, in addition to EGR and air injection already in use, to comply with the 1983 standards. The added emission control system costs are estimated at $171 per engine. Adding certification testing costs, SEA testing costs and amortized facility costs, the first cost increase per engine attributable to this proposed action will be $204. This cost is equivalent to 1 to 2.5 percent of the price of a new gasoline-fueled HD vehicle. The increased cost of unleaded fuel, catalyst repacement (it is assumed that 60% of in-use catalysts will require replacement), and I/M fees are estimated to total $1,016 (present worth on January 1, 1983, assuming 10% interest rate) over the useful life of a gasoline powered heavy-duty vehicle. The increase in cost attributable to the use of unleaded fuel (required because of expected catalyst usage on gasoline-fueled engines) is the major cost resulting from these proposed regulations. More than 80% of the total cost per gasoline-fueled vehicle is chargeable to unleaded fuel.

At present, EPA anticipates that diesel engines can meet the proposed 1983 standards with minor changes to injectors and calibration. These changes are estimated to cost an average of $25 per engine. The total first cost increase resulting from these proposed regulations is estimated at $185 per engine. This cost is equivalent to 0.2 to 1 percent of the price of a new diesel-fueled HD vehicle. This figure includes amortized facility costs, certification costs, and SEA testing costs.

EPA does not expect an increase in fuel consumption for either gasoline-fueled or diesel engines. Based on experience with LDV and LDT catalyst technology, fuel consumption may be decreased for gasoline-fueled engines, thus resulting in the cost savings. A fuel economy increase was not estimated, therefore no cost credit was included in the above cost estimates.

Cost Effectiveness

It is not possible to present the individual cost effectiveness values of each

element (e.g., parameter adjustment and Selective Enforcement Auditing) of this proposal due to insufficient data on incremental effectiveness. This is because the individual elements are interrelated which makes it difficult to isolate the benefits for each element. Removing one element would seriously jeopardize the effectiveness of the remaining program. Each element was evaluated with respect to its criticalness and with respect to the reasonableness of its associated cost. Therefore, the overall cost effectiveness for the total compliance strategy was evaluated as a whole.

The cost effectiveness for the total action is summarized below.

COST EFFECTIVENESS ($/TON)

	Pollutant		
	HC	CO	NOx
Gasoline-fueled engines	300*	15*	
Diesel engine	162*		

*The costs used in calculating these values are present worths on January 1, 1983, using a 10% interest rate.

Based on the above figures the proposed action appears cost effective when compared to other emission control strategies. Chapter VII of the Regulatory Analysis contains the cost effectiveness figures for other strategies.

REQUEST FOR COMMENTS AND INFORMATION

Athough the HD engine manufacturers may not have the capability to conduct transient emission tests at this time, EPA maintains that they do have a genuine opportunity to comment on the proposed rule and aid EPA in formulating final rules. Since the early 1970's, EPA has been involved in the development of the proposed transient procedure and has continuously provided industry with periodic progress reports. These progress reports have taken the form of formal briefings, meetings, and numerous technical reports. The available information has provided the industry with a step-by-step description of EPA's development effort. The manufacturers should have a thorough understanding of this effort which can be used to provide EPA with meaningful comments on its proposed regulations. EPA has identified several areas in which the manufacturers can provide constructive input. These areas are listed below.

SPECIFIC COMMENT REQUESTS

1. Manufacturers are asked to comment on the technological feasibility of:

(a) Developing catalyst control systems which can survive in a heavy-duty vehicle environment;

(b) Achieving 90% control of HC and CO emissions with catalyst systems based on experience gained from light-duty vehicles and trucks and from retrofit programs; and

(c) Meeting more stringent levels of HC and CO than those proposed;

(d) Controlling diesel crankcase emissions such that none are discharged into the atmosphere.

2. Comments are requested on the representativeness of the emission test cycles, including the weighting factors for hot and cold starts, cycle, length, and cycle segment sequencing.

3. Manufacturers are asked to comment on the methodology used to develop the transient cycles, including the data base, horsepower models, data editing process, category analysis, and the cycle generation technique.

4. Comments concerning lead time requirements for acquiring CVS's, engine dynamometers, transient control systems, and building modifications are solicited.

5. The manufacturers are asked to evaluate the representativeness of the baseline engine sample and the methodology used to determine the baseline emission values (i.e., sales weighted average).

6. Manufacturers asserting that a nonconformance penalty alternative should be made available for model year 1983 are requested to comment on what emission levels should be used as upper limits. These estimates should be based on the lowest emission levels that the manufacturer projects it will be able to achieve.

7. Comments are requested on the proposed method for calculating nonconformance penalties.

8. Comments are requested on the following cost related items:

(a) Test facility modifications and costs;

(b) Certification costs;

(c) SEA costs; including costs associated with meeting a 10 percent AQL;

(d) Emission control system development costs;

(e) Emission control system and engine modification costs;

(f) Costs associated with the various emission control systems which have the *potential* for reducing HC and CO emissions by 90%;

(g) Costs associated with meeting HC and CO levels more stringent than those proposed (include development costs, hardware costs, etc.);

(h) Cost analysis methodology; and

(i) Fuel economy changes associated with different emission control systems and emission reductions (above and below the proposed standards.)

9. Manufacturers, particularly manufacturers with low sales, are asked to comment on the impact of these proposed regulations with respect to their survival in the heavy-duty market.

10. In estimating the emissions reductions and costs associated with this proposal, inspection maintenance (I/M) programs were assumed to play a significant role. Moreover, the implementation of I/M is not directly under the control of EPA. EPA specifically solicits comments on the cost effectiveness of this proposal both with and without the implementation of heavy-duty I/M programs.

Comments submitted on the above items should be presented at least at the level of detail used in the Regulatory Analysis. Relevant comments, views, suggestions, and data from any individual or group on pertinent topics will be considered in drafting the final regulations. Comments submitted shall be available for public inspection during normal business hours at the Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 4th and M Streets, S.W., Washington, DC 20460.

AVAILABILITY OF DOCUMENTS

The following EPA technical reports are available from the Director, Emission Control Technology Division, 2565 Plymouth Rd., Ann Arbor, MI 48105. These reports relate to the development of this proposed regulation.

TECHNICAL REPORTS DOCUMENTING THE DEVELOPMENT OF NEW HEAVY-DUTY ENGINE TEST PROCEDURES

EPA Report Number	Technical Report Title	Author	Public Release Date
HDV 76-03	Engine Horsepower Modeling for Diesel Engines.	C. France	October 1976.
HDV 76-04	Engine Horsepower Modeling for Gasoline Engine.	L. Higdon	December 1976.
HDV 77-01	Selection of Transient Cycles for Heavy-Duty Engines.	T. Wysor and C. France	November 1977.
HDV 78-01	Category Selection for Transient Heavy-Duty Chassis and Engine Cycles.	C. France	May 1978.
HDV 78-02	Selection of Transient Cycles for Heavy-Duty Vehicles.	T. Wysor and C. France	June 1978.
HDV 78-03	Truck Driving Patterns and Use Survey, Phase II, Final Report, Part II, Los Angeles.	L. Higdon	May 1978.

TECHNICAL REPORTS DOCUMENTING THE DEVELOPMENT OF NEW HEAVY-DUTY ENGINE TEST PROCEDURES—Continued

EPA Report Number	Technical Report Title	Author	Public Release Date
HDV 78-04	Transient Cycle Arrangement for Heavy-Duty Engine and Chassis Emission Testing.	C. France	July 1978
HDV 78-05	Analysis of Hot/Cold Cycle Requirements for Heavy-Duty Vehicles.	C. France	July 1978.
HDV 78-06	A Preliminary Examination of the Repeatability of the Heavy-Duty Transient Dynamometer Emission Test.	W. Clemmens	June 1978.
HDV 78-07	Draft—Recommended Practice for Determining Exhaust Emissions from Heavy-Duty Engines Under Transient Conditions.	C. France and W. Clemmens	August 1978.
	Diesel Crankcase Emissions Characterizations: Final Report of Task No. 4, Contract 68-03-2196.	C. J. Hare and D. A. Montalvo, Southwest Research Institute.	May 1977.
	Nonconformance Penalties for Heavy-Duty Engines.	R. Hayes and S. Besse, Putnam, Hayes, and Barlett, Inc.	April 1978.
	Draft Preamble: Selective Enforcement Auditing and Production Compliance Auditing of New Gasoline-Fueled and Diesel Heavy-Duty Engines.		October 1978.
	Air Quality Analysis of 1983 and 1985 Mandated Heavy-Duty Vehicle Emission Standards.	EPA Office of Air Quality Planning and Standards.	August 1978.
	Analytical Development of Sampling Plans for Selective Enforcement Auditing.	Sylvia F. Leaver	December 1978.
	Analytical Development of Sampling Plans for Production Compliance Auditing.	Sylvia F. Leaver	December 1978.

Other reports available through the National Technical Information Service (U.S. Dept. of Commerce, 5285 Port Royal Road, Springfield, VA 22161) are:

EPA Report Number	Technical Report Title	Author	Release Date
APT.D-1523	Heavy-Duty Vehicle Driving Pattern and Use Survey, Final Report Part I, New York City.	J. C. Cosby, Wilbur Smith and Associates.	May 1973.
EPA-460/3-75-005.	Heavy-Duty Vehicle Driving Pattern and Use Survey: Part II—Los Angeles Basin Final Report.	Wilbur Smith and Associates	February 1974.
EPA-460/3-77-009.	Truck Driving Pattern and Use Survey Phase II—Final Report, Part I.	Wilbur Smith and Associates	June 1977.
EPA-460/3-78-008.	Heavy-Duty Vehicle Cycle Development.	Malcolm Smith Systems Control, Inc.	July 1977.

COMMENTS AND THE PUBLIC DOCKET: Copies of materials relevant to this rulemaking action are contained in Public Docket No. OMSAPC-78-4 at the U.S. Environmental Protection Agency, Central Docket Section, Waterside Mall Room 2903B (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. (As provided in 40 CFR Part 2 the Agency may charge a reasonable fee for copying services.)

EVALUATION PLAN: EPA intends to review the effectiveness and need for continuation of the provisions contained in this action no more than five years after initial implementation of the final regulation. In particular, EPA will solicit comments from affected parties with regard to cost and other burdens associated with compliance and will also review data on the gaseous emissions from heavy-duty vehicles built before and after promulgation of the regulation to determine how effective this measure has been.

REPORTING AND RECORD KEEPING REQUIREMENTS: While the EPA is not aware that this proposed regulation would impose any significant new or additional reporting or recordkeeping requirements on affected parties, the Agency specifically invites comments on ways that any such burdens might be reduced.

Under the EPA's new "sunset" policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire five years from the date of promulgation, unless EPA takes affirmative action to extend them. To accomplish this, a provision automatically terminating the reporting requirements at that time will be included in the text of the final regulation.

EPA intends to promulgate a final regulation, modified as the Administrator deems appropriate, after considering comments and in time to apply to the 1983 model year.

NOTE.—The Administrator has determined that this action is a "Significant" regulation. We have prepared a document entitled "Proposed Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Engines: Regulatory Analysis" detailing the Regulatory Analysis required by Executive Order 12044 and the Economic Impact Assessment required by Section 317 of the amended Clean Air Act. Anyone may review and reproduce this document in the EPA Central Docket Section. Copies are also available upon request from the Director, Emission Control Technology Division, Office of Mobile Source Air Pollution Control, 2565 Plymouth Rd., Ann Arbor, Michigan 48105.

Dated: January 25, 1979.

DOUGLAS M. COSTLE,
Administrator.

Part 86 of Chapter I, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

NOTE: This Notice of Proposed Rulemaking concerns only provisions of Part 86 applicable to heavy-duty engines. Certain of the proposed amendments listed here, if read literally, might indicate that provisions currently in effect for light-duty trucks are to be retained. This is not the case. Another, independent Notice of Proposed Rulemaking concerning only provisions of Part 86 applicable to light-duty trucks recently has been or will shortly be published. Interested persons should consult that Notice regarding the light-duty truck amendments proposed to take effect concurrently with the heave-duty engine amendments being proposed here.

1. Paragraph (a) of § 86.077-2 is proposed to be revised to read as follows:

§ 86.077-2 Definitions.

(a) The definitions in this section apply to this subpart and also to Subparts B, D, H, I, J, N, and O of this part.

* * * * *

2. Paragraph (a) of § 86.078-3 is proposed to be revised to read as follows:

§ 86.078-3 Abbreviations.

(a) The abbreviations in this section apply to this subpart and also to Subparts B, D, H, I, J, N, O and P of this part and have the following meanings:

* * * * *

3. A new § 86.083-2 is proposed to read:

§ 86.083-2 Definitions.

The following definitions apply beginning with the 1983 model year. Section 86.080-2 remains effective excepting those definitions which are hereby superseded.

A "maximum torque curve" is a plot of engine torque versus engine speed.

The "measured rated rpm" is the engine speed at which the maximum horsepower occurs as derived from the maximum torque curve.

The "high idle speed" for a diesel engine means the governed speed at no load.

"Integrated brake horsepower" is the total work done by an engine during a transient test, calculated by the incremental summing of brake horsepower-hour segments.

"Scheduled maintenance" means any adjustment, repair, removal, disassembly, cleaning, or replacement of vehicle components or systems which is performed on a periodic basis to prevent part failure or vehicle (if the engine were installed in a vehicle) malfunction, or anticipated as necessary to correct an overt indication of vehicle malfunction or failure for which periodic maintenance is not appropriate.

"Unscheduled maintenance" means any adjustment, repair, removal disassembly, cleaning, or replacement of vehicle components or systems which is performed to correct a part failure or vehicle (if the engine were installed in a vehicle) malfunction which was not anticipated.

"Useful life" means:

(1) For light-duty vehicles and light-duty trucks a period of use of 5 years or 50,000 miles, whichever first occurs.

(2) For heavy-duty engines the average period of use up to engine retirement or rebuild, whichever occurs first, as determined by the manufacturer based on survey information of in-service engines or, for new engines, based on durability testing of prototype engines. However, if the manufacturer determines that this period of use is less than 5 years or 50,000 miles (or the equivalent) whichever occurs first, the useful life shall be a period of use of 5 years or 50,000 miles (or the equilvalent), whichever occurs first, as required by section 202(d)(2) of the Act. The manufacturer shall not determine the useful life to be less than the period of the basic mechanical warranty on the engine assembly.

"Non-emission related maintenance" means that maintenance which does not substantially affect emissions and which does not have a lasting effect on the deterioration of the vehicle or engine with respect to emissions once the maintenance is performed at any particular date.

"Emission-related maintenance" means that maintenance which does substantially affect emissions or which is likely to have a lasting effect on the deterioration of the vehicle or engine with respect to emissions, even if the maintenance is performed at some time other than that which is recommended.

4. A new § 86.083-4 is proposed to read:

§ 86.083-4 Section numbering; construction.

(a) (1) *Section numbering.* (1) The model year of initial applicability is indicated by the last two digits of the 5-digit group. A section remains in effect for subsequent model years until it is superseded. The number following the hyphen designates what previous section is replaced by a future regulation.

EXAMPLES: Section 86.077-6 applies to the 1977 and subsequent model years until superseded. If a § 86.080-6 is promulgated it would take effect with the 1980 model year; § 86.077-6 would not apply after the 1979 model year. Section 86.077-10 would be replaced by § 86.078-10 beginning with the 1978 model year.

(2) Where a section still in effect references a section that has been superseded, the reference shall be interpreted to mean the superseding section.

(b) *Construction.* Except where indicated, the language in this subpart applies to both vehicles and engines. In many instances language referring to engines is enclosed in parentheses and immediately follows the language discussing vehicles.

5. A new § 86.083-5 is proposed to read:

§ 86.083-5 General standards; increase in emissions; unsafe conditions.

(a) (See paragraph (a) of § 86.081-5.)

(b)(1) Any system installed on or incorporated in a new motor vehicle (or new motor vehicle engine) to enable such vehicle (or engine) to conform to standards imposed by this subpart:

(i) Shall not in its operation or function cause the emission into the ambient air or any noxious or toxic substance that would not be emitted in the operation of such vehicle (or engine) without such system, except as specifically permitted by regulation; and

(ii) Shall not in its operation, function, or malfunction result in any unsafe condition endangering the motor vehicle, its occupants, or persons or property in close proximity to the vehicle.

(2) In establishing the physically adjustable range of each adjustable parameter on a new motor vehicle (or new motor vehicle engine), the manufacturer shall insure that, taking into consideration the production tolerances, safe vehicle driveability characteristics are available within that range, as required by § 202(a)(4) of the Clean Air Act.

(3) Every manufacturer of new motor vehicles (or new motor vehicle engines) subject to any of the standards imposed by this subpart shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicles (or motor vehicle engines) in accordance with good engineering practice to ascertain that such test vehicles (or test engines) will meet the requirements of this section for the useful life of the vehicle (or engine).

6. A new § 86.083-10 is proposed to read:

§ 86.083-10 Emission standards for 1983 gasoline-fueled heavy-duty engines.

(a)(1) Exhaust emissions from new 1983 model year gasoline-fueled heavy-duty engines shall not exceed:

(i) *Hydrocarbons.* (A) A level determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines, measured under transient operating conditions.

(B) A level expressed in parts per million (as carbon) of exhaust flow at curb idle and determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines.

(ii) *Carbon monoxide.* (A) A level determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines, measured under transient operating conditions.

(B) A level expressed in percentage of exhaust gas flow at curb idle and determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines.

(iii) *Oxides of nitrogen.* A level determined by the Administrator that requires the same relative degree of control as required by § 86.079-10 for 1979 model year gasoline-fueled heavy-duty engines.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules set forth in Subparts N or P and measured and calculated in accordance with those procedures.

(b) [Reserved]

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1983 model year gasoline-fueled heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section

shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subparts N or P of this part to ascertain that such test engines meet the requirements of paragraph (a) and (c) of this section.

7. A new § 86.083-11 is proposed to read:

§ 86.083-11 Emission standards for 1983 diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1983 model year diesel heavy-duty engines shall not exceed:

(i) *Hydrocarbons.* (A) A level determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines, measured under transient operating conditions.

(B) A level expressed in parts per million (as carbon) of exhaust gas flow at curb idle and determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines.

(ii) *Carbon monoxide.* (A) A level determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines, measured under transient operating conditions.

(B) A level expressed as a percentage of exhaust gas flow at curb idle and determined by the Administrator to be equal to 10% of a sales-weighted average of emissions from 1969 model year gasoline-fueled heavy-duty engines.

(iii) *Oxides of nitrogen.* A level determined by the Administrator that requires the same relative degree of control as required by § 86.079-11 for 1979 model year diesel heavy-duty engines.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust over operating schedules as set forth in Subparts N or P and measured and calculated in accordance with those procedures.

(b)(1) The opacity of smoke emissions from new 1983 and later model year diesel heavy-duty engines shall not exceed:

(i) 0 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1983 model year diesel heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subparts I, N, or P of this part to ascertain that such test engines meet the requirements of paragraphs (a) (b) and (c) of this section.

8. A new § 86.083-21 is proposed to read:

§ 86.083-21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii)(A) The manufacturer shall provide to the Administrator in the preliminary application for certification:

(1) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters to which access is difficult) and that, if adjusted to settings other than the manufacurer's recommended setting, may affect emissions;

(2) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(3) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(4) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameters will be subject to adjustment for certification and Selective Enforcement Audit (and Production Compliance Audit for heavy-duty engines) and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) A description of the proposed mileage (or service) accumulation procedures for durability testing.

(ii) A description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.083-23(b)(2).

(iii)(A) A description of the test procedures to be used to establish the preliminary exhaust emission deterioration factors for heavy-duty engines required to be determined and supplied in § 86.083-23(b)(3).

(B) A statement of the useful life of each heavy-duty engine as determined by the manufacturer. The useful life shall be expressed as a period of engine or vehicle operation or as an equivalent vehicle mileage (or both). The manufacturer shall include in the application the data or information on which it based its determination of the useful life.

(5) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(6) At the option of the manufacturer, the proposed composition of the emission-data and durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under §§ 86.079-32, 86.079-33, and 86.079-34 shall be

submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

9. A new § 86.083-22 is proposed to read:

§ 86.083-22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit and Production Compliance Audit, adequacy of limits, and physically adjustable ranges.

(a) through (c) (See paragraphs (a) through (c) of § 86.081-22).

(d)(1) The Administrator does not approve the test procedures for establishng the evaporative emission deterioration factors. The manufacturer shall submit the procedures as required in § 86.083-21(b)(4)(ii) prior to the Administrator's selection of the test fleet under § 86.083-24(b)(1) and if such procedures will involve testing of durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.083-24(c)(1), prior to initiation of such testing.

(2) The Administrator does not approve the test procedures for establishing preliminary exhaust emission deterioration factors for heavy-duty engines nor the manufacturer's determination of the useful life or lives of its heavy-duty engines. The manufacturer shall submit the procedures and useful life determinations as required in §86.083-21(b)(4)(iii) prior to the initiation of durability testing.

(e) When the Administrator selects emission-data vehicles (engines) for the test fleet, he will at the same time determine those vehicle or engine parameters which will be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter and notify the manufacturer of his determinations.

(1)(i) The Administrator may determine to be subject to adjustment the idle fuel-air mixture, idle speed, and initial spark timing parameters on gasoline-fueled vehicles (engines) (carbureted or fuel injected); the choke valve action parameter(s) on carbureted, gasoline-fueled vehicles (engines); or any parameter on any vehicle (engine) (diesel or gasoline-fueled) which is physically capable of being adjusted, may significantly affect emissions, and was not present on vehicles (engines) of the same engine family in the previous model year.

(ii) The Administrator may, in addition, determine to be subject to adjustment any other parameters on any vehicle or engine which is physically capable of being adjusted and which may affect emissions. However, the Administrator may do so only if he has previously notified the manufacturer that he might do so and has found, at the time he gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment, the Administrator will consider the likelihood that, for each of the parameters listed in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles (engines). In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application, surveillance information from similar in-use vehicles (engines), the difficulty and cost of gaining access to an adjustment, damage to the vehicle (engine) if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of setting other than the manufacturer's recommended setting on vehicle (engine) performance characteristics including emission characteristics.

(2)(i) The Administrator shall determine a parameter to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour.

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws.

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), the elongation of the adjustable member is limited by design or, in the case of a bendable member, the member is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 dollars).

(ii) The Administrator shall determine a physical limit or stop to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned or crimped so as to prevent additional travel without breakage or need for costly repairs.

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (screwdriver, pliers, open-end or box wrenches, etc.) without incurring significant and costly damage to the vehicle (engine) or control system or without taking more than one-half hour or costing more than $20 (1978 dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjsutment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (e)(2)(i) and (e)(2)(ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (e)(2)(i) or (e)(2)(ii) of this section, the Administrator will consider the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles (engines); the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle (engine) if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle (engine) performance characteristics other than emission characteristics.

(3) The Administrator shall determine two physically adjustable ranges for each parameter subject to adjustment:

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator may include within the physically adjustable range applicable to testing under this subpart (certification testing) all set-

tings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the preliminary application for certification.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability. The Administrator may also include the production tolerances on the location of these limits or stops when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under Subpart G or K (Selective Enforcement Audit and Production Compliance Audit for heavy-duty engines) only the actual settings to which the parameter is adjusted during production.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located on the test vehicle (engine).

(f) If the manufacturer submits the information specified in § 86.083-21(b)(1)(ii) in advance of its full preliminary application for certification, the Administrator shall review the information and make the determinations required in paragraph (e) of this section.

(g) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (e) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078-6 with respect to such issue.

10. A new § 86.083-23 is proposed to read:

§ 86.083-23 Required data.

(a) (See paragraph (a) of § 86.079-23).

(b)(1) Exhaust emission durability data on such vehicles (or engines) tested in accordance with applicable test prodedures and in such numbers as specified, which will show the performance of the systems installed on, or incorporated in, the vehicle (or engine) for extended mileage, (or extended operation), as well as a record of all pertinent maintenance (all maintenance and servicing for diesel heavy-duty engines) performed on the test vehicles (or test engines).

(2) Evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.083-21(b)(4)(ii) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.079-30 will meet the evaporative emission standards in § 86.081-8 or 86.081-9, as appropriate, for the useful life of the vehicle.

(3) For each heavy-duty engine family-emission control system combination for which application for certification is made for the first time, preliminary emission deterioration factors and all test data that are derived from testing described under § 86.083-21(b)(4) (iii) designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.083-30 will meet the emission standards in § 86.083-10 or § 86.083-11, as appropriate, for the useful life of the engines. Preliminary deterioration factors shall also be submitted for each combination for which certification has been granted in the previous model year and for which the Administrator has waived the requirement for in-use service accumulation under the waiver provision of § 86.083-26(b)(7)(i).

(c) through (e)(1) (See paragraphs (c) through (e)(1) of § 86.079-23).

(2) For evaporative emission durability and heavy-duty engine exhaust emission durability, the statement of compliance with paragraph (b)(2) or (b)(3) of this section.

11. A new § 86.083-24 is proposed to read:

§ 86.083-24 Test vehicles and engines.

(a)(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following aspects:

(i) the cylinder bore center-to-center dimensions.

(ii) the dimension from the centerline of the crankshaft to the centerline of the camshaft.

(iii) The dimension from the centerline of the crankshaft to the top of the cylinder block head face.

(iv) The cylinder block configuration (air cooled or water cooled; L-6, 90°, V-8, etc.).

(v) The location of the intake and exhaust valves (or ports) and the valve (or port) sizes (within a ⅛-inch range on the valve head diameter or within 10 percent on the port area).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a) (2) and (3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics.

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) To be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(b) Emission data:

(1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(b)(1)(i) through (b)(1)(vii). (See paragraphs (b)(1)(i) through (b)(1)(vii) of § 86.080-24).

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(b)(2)(i) through (b)(2)(iv). (See paragraphs (b)(2)(i) through (b)(2)(iv) of § 86.080-24).

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system feel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(c) Durability data:

(1) *Durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle and light-duty truck durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator not later than 30 days following notification of the test fleet selection.

(2) *Heavy-duty durability-data engines.* Paragraph (c)(2) of this section applies to engines, subsystems, or components used to establish preliminary deterioration factors for heavy-duty engines, and to heavy-duty durability-data engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine preliminary exhaust emission deterioration factors for each engine family-control system combination for the initial year(s) of certification of the combination.

(ii) For each engine family-control system combination for which a manufacturer applies for a certificate of conformity with the applicable emission standards of § 86.083-10 or § 86.083-11 for the first time, the manufacturer shall select at least three durability-data engines to represent the combination during the in-vehicle service accumulation required by § 86.083-26(b). At least one of these three engines shall be of the displacement with the largest projected sales volume of engines in the combination. The selected engines shall be randomly selected production engines. Emission tests of any kind shall not be used to select specific production engines to be durability-data engines. The manufacturer shall notify the Administrator of the engine configuration(s) of the durability-data engines to be selected under this paragraph no later than when it submits the compiled information required by § 86.083-23. The manufacturer shall select specific production engines to be durability-data engines not later than two months after the start of production of the configuration(s).

(d) through (e). (See paragraphs (d) through (e) of § 86.083-24).

(f) In lieu of testing an emission-data or durability-data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.083-23 has previously been submitted. For heavy-duty engine durability data required to be obtained from in-vehicle service accumulation, the Administrator will grant this approval only if each durability-data engine in an engine family-control system has completed service accumulation up to its useful life or up to the point at which it was no longer functional as required by § 86.083-26 (b).

(g) (See paragraph (g) of § 86.080-24).

12. A new § 86.083-25 is proposed to read:

§ 86.083-25 Maintenance.

(a) through (b) (See paragraphs (a) through (b) of § 86.079-25).

(c) *Heavy-duty engines.* Paragraph (c) of this section applies to heavy-duty engines.

(1) All emission-related scheduled maintenance which is performed on durability-data engines must be technologically necessary and must have a reasonable likelihood of being performed in-use.

(i) The manufacturer must submit data to the Administrator which demonstrates that all of the emission-related maintenance which is to be performed on the durability-data engines is technologically necessary. EPA has determined that emissions-related maintenance in addition to, or at shorter intervals than, that outlined in paragraphs (c)(1)(ii) and (c)(1)(iii), is not technologically necessary. The Administrator may determine that even maintenance more restrictive (e.g., longer intervals) than that listed in paragraphs (c)(1)(ii) and (c)(1)(iii) is not technologically necessary.

(ii) For gasoline-fueled engines, emission-related maintenance in addition to, or at shorter intervals than, that listed below will not be accepted as technologically necessary, except as provided in paragraph (c)(1)(iv).

(A) The cleaning or replacement of spark plugs at 30,000 miles and at 30,000 mile intervals thereafter.

(B) The inspecting, cleaning, adjustment, or replacement of the following at 50,000 miles of use and at 50,000-mile intervals thereafter:

(*1*) Positive crankcase ventilation and exhaust gas recirculation valves;

(*2*) Emission-related hose and tubes;

(*3*) Ignition wires;

(*4*) Oxygen sensor;

(*5*) Idle mixture.

(C) The replacement of the catalytic converter or inspecting and cleaning

of the injector tips at 100,000 miles of use and at 100,000-mile (or longer) intervals thereafter.

(iii) For diesel engines, emission-related maintenance in addition to, or at shorter intervals than, that listed below will not be accepted as technologically necessary, except as provided in paragraph (c)(1)(iv).

(A) The cleaning or replacement of the exhaust gas recirculation and positive crankcase ventilation valves at 50,000 miles of use and at 50,000-mile intervals thereafter.

(B) The cleaning of injector tips at 100,000 miles of use and at 100,000-mile intervals thereafter.

(C) The cleaning, rebuilding, or replacement of the following at 200,000 miles of use and at 200,000-mile intervals thereafter:

(*1*) Turbocharger;

(*2*) Injectors.

(iv) Requests for authorization of scheduled maintenance of emission control related components in addition to those items of maintenance covered under paragraphs (c)(1)(ii) and (c)(1)(iii) will be considered if the maintenance is a direct result of the implementation of new technology. New technology means any technology not found in production on any motor vehicle prior to the 1980 model year.

(v) Emission-related scheduled maintenance items which satisfy one of the following will be accepted as having a reasonable likelihood of being performed in-use.

(A) Data is presented to the Administrator which adequately demonstrates that vehicle performance will quickly deteriorate to a point unacceptable for typical driving if the maintenance item is not performed at the recommended interval.

(B) The manufacturer provides this maintenance free of charge.

(C) Survey data is submitted to the Administrator which adequately demonstrates that 90 percent of such engines (at an 80% confidence level) already have this maintenance item performed in-use at the recommended interval and throughout the useful life of the engine for which certification is being sought.

(D) For maintenance for which there is no in-use experience on heavy-duty engines, a clearly displayed visual signal alerts the vehicle driver that maintenance is due. This option is available only for a period sufficient to allow the manufacturer to collect the appropriate survey data to demonstrate that the signal is at least contributing to the adequate demonstration (paragraph (C) above) that the specific maintenance is actually being performed in-use. This survey data must be submitted at least once every 2 years. The signal must be continuous while the engine is in operation, but may be overridden by the driver after each engine start-up. The signal, with the possible addition of a label, must also direct the driver to that place in the owner's manual where this maintenance item is recommended and also show the driver which maintenance item is due. The signal may be eliminated by the performance of the required maintenance.

(vi) Non-emission related engine maintenance which is reasonable and necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, accessory belt inspection, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, etc.) may be performed on durability-data engines at the intervals recommended by the manufacturer to the ultimate purchaser.

(vii) Unscheduled maintenance may be performed on durability-data engines, except as provided in paragraph (c)(1)(viii)(A) of this section, only under the following provisions:

(A) An injector or spark plug may be changed if a persistent misfire is detected.

(B) Readjustment of a gasoline-fueled engine cold-start enrichment system may be performed if there is a problem of stalling.

(C) Readjustment of the engine idle speed (curb idle and fast idle) may be performed, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(viii) any other unscheduled engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on durability-data engines shall be performed only with the advance approval of the Administrator.

(A) Such approval will be given if the Administrator:

(*1*) Has made a preliminary determination that the part failure or system malfunction, or the repair of such failure or malfunction, does not render the engine unrepresentative of engines in use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(*2*) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss.

(B) Emission measurements may not be used as a means of determining the need for unscheduled maintenance under paragraph (c)(1)(vii) of this section.

(ix) If the Administrator determines the part failure or system malfunction occurrence and/or repair rendered the engine unrepresentative of engines in use, the engine shall not continue to be used as a durability-data engine. The emission data from an engine that is discontinued as a durability-data engine shall not be included in the evaluation of the deterioration factor for the family-system combination if its calculated deterioration factor is less than the average deterioration factor for the remaining durability-data engines in the combination, unless the manufacturer's engineering analysis demonstrates, to the satisfaction of the Administrator, that the data is representative.

(2) [Reserved]

(3)(i) Scheduled maintenance on emission-data engines is limited to the adjustment of idle speed once before the 125-hour test point, provided the idle speed is outside the manufacturer's specifications.

(ii) Any other engine, emission control system, or fuel system, adjustment, repair, removal, disassembly, cleaning, servicing, or replacement shall be performed only with the advance approval of the Administrator.

(4) [Reserved]

(5)(i) Complete emission tests (see Subparts I, N, and P of this part) are required, unless waived by the Administrator, before and after catalytic converter or oxygen sensor servicing on any engine and before and after turbocharger and injector maintenance at 200,000 miles on diesel engines.

(ii) The Administrator may require emission tests before and after any unscheduled maintenance.

(iii) [Reserved]

(c)(5)(iv) through (c)(7). (See paragraphs (c)(5)(iv) through (c)(7) of § 86.079-25).

13. A new § 86.083-26 is proposed to read:

§ 86.083-26 Mileage and service accumulation; emission measurements.

(a) (See paragraph (a) of § 86.079-26).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) There are three types of service accumulation applicable to heavy-duty engines:

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.083-24(c)(2)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission-data engines selected under § 86.083-24(b)(2) or § 86.083-24(b)(3), and on durability-data en-

gines selected under § 86.083-24(c)(2)(ii). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(iii) In-vehicle service accumulation on durability-data engines selected under § 86.083-24(c)(2)(ii). The manufacturer determines the host vehicles and vehicle service applications to be used in this service accumulation, subject to the requirements of paragraph (b) of this section and consistent with good engineering practice.

(3) Preliminary exhaust emission deterioration factors will be determined on the basis of the service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures. These preliminary factors shall be used for the first model year for which a certificate of conformity with applicable standards of § 86.083-10 or § 86.083-11 is sought for the engine family-control system combination. They may be used for the second model year also if 30,000 miles of in-vehicle service has not been accumulated three months prior to the second model year.

(4)(i) Each emission-data engine and each durability-data engine selected for in-vehicle service accumulation shall be operated on a dynamometer for 125 hours plus or minus eight hours with all emission control systems installed and operating. An emission test shall be conducted at the end of this dynamometer service accumulation. The manufacturer may conduct up to three emission tests on durability-data engines, provided it stated it would do so in the application and provided all durability-data engines in an engine family-control system combination receive the same number of tests. A zero-hour emission test may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system. If a break-in procedure is used the procedure must be the same as recommended to the ultimate purchaser. The hours accumulated during the break-in procedure will not be counted as part of the service accumulation.

(ii) If the emission test conducted at the end of the 125 hours of dynamometer service accumulation on a durability-data engine, in combination with the appropriate preliminary deterioration factors, indicates that the engine is projected to fail the emission standards at its useful life, the engine shall not be used as a durability-data engine. The manufacturer shall randomly select another production engine of the same configuration to replace the failed engine. The certificate of conformity is suspended with respect to the failed engine.

(5)(i) Within one month of the selection of each specific production engine to be ued as a durability-data engine, the manufacturer shall have completed the dynamometer service accumulation and emission testing of the engine as required by paragraph (b)(4) of this section, shall have installed the engine in the host vehicle, and shall have put the host vehicle into service.

(ii) The physical characteristics of each host vehicle shall be representative of those vehicles commonly used in combination with engines of the same configuration as the durability-data engine.

(iii) The service application of the host vehicles shall be typical of commercial or consumer applications of vehicles commonly used in combination with engines of the same configuration as the durability-data engine. The manufacturer shall document before beginning in-vehicle service accumulation that the selected service application of the host vehicles will normally provide an annual mileage accumulation of at least 15,000 miles or 10 percent of the useful life mileage, whichever is greater, and at most 40,000 miles or 40 percent of the useful life mileage, whichever is greater.

(iv) At least 15,000 miles or 10 percent of the useful life mileage, whichever is greater, and at most 40,000 miles or 40 percent of the useful life mileage, whichever is greater, shall be accumulated on each druability-data engine representing the engine family-control system combination in each year. Service accumulated on a test track or on a public or private road when the only purpose is to accumulate service may not be credited toward the required amount of in-vehicle service accumulation.

(v) At least 30,000 miles shall be accumulated on at least one of the durability-data engines representing the engine family-control system combination in time to allow in-use deterioration factors to be calculated and used for the third model year for which the manufacturer applies for a certificate of conformity for the combination. This test data must be supplied not later than three months prior to the third model year.

(vi) Each durability-data engine shall be removed from the host vehicle, tested for emissions, and reinstalled in the host vehicle as follows. At least one complete emission test (see Subpart N and P for gasoline-fueled engines and Subparts I, N, and P for diesel engines) shall be conducted at each point specified. The manufacturer may conduct up to three tests at each point, provided it stated it would do so in the application and provided all durailty-data engines in an engine family-control system combination receive the same number of tests at all test points.

(A) Each engine shall be removed and tested between the 30,000 and 35,000 mileage points. After this test has been completed for at least one durability-data engine in an engine family-control system combination, the preliminary deterioration factors determined under paragraph (b)(3) of this section shall not be used in determining compliance by the combination with emission standards, for any model year for which a certificate of conformity has not yet been granted. Instead, in-use deterioration factors will be calculated based on all emission test results from all engines in the combination which have accumulated at least 30,000 miles of service, except those emission test results excluded from the calculation under § 86.083-25(c)(1)(ix) or under paragraph (b)(5)(vii) of this section.

(B) Each engine shall be removed and tested before and after those maintenance operations requiring such testing under § 86.083.25.

(C) The interval between successive removals and tests after the test between 30,000 and 35,000 miles shall not exceed twelve months. The interval between successive removal and tests may be less than four months only if such testing is required by this subpart or by the Administrator.

(D) After 30,000 miles, the manufacturer shall perform removals and tests on a schedule which provides at least one additional test point for each engine for use in determining updated in-use deterioration factors for each successuve model year. This additional test data shall be provided not later than three months prior to the new model year. Any test data supplied after that time will apply to the following model year's deterioration factors.

(E) The manufacturer may perform one removal and test prior to 30,000 miles, in addition to any which this subpart or the Administrator requires the manufacturer to conduct before and after maintenance.

(F) Each engine shall be removed and tested upon completion of its in-vehicle service accumulation, if still functioning.

(vii) In-vehicle service accumulation for each enginge shall continue until the engine has reached the end of its useful life as previously determined by the manufacturer. For any engine which stops functioning before reach-

ing the end of its useful life, the manufacturer must submit to the Administrator an engineering analysis of why the engine stopped functioning. Any emission data from an engine which stops functioning befor reaching the end of its useful life shall not be included in the calculation of the deterioration factor for the family-system combination if its calculated deterioration factor is less than the average deterioration factor for the remaining durability-data engines in the combination, unless the manufacturer's engineering analysis demonstrates to the satisfaction of the Administrator that the data is representative. A credit of 4,000 miles is allowed when determining when the useful life point has been reached, to account for the 125 hours of dynamometer service accumulation.

(6)(i) Upon completion of in-vehicle service accumulation for all engines in an engine family-control system combination, the emission test results collected during service accumulation will be used in the calculation of the in-use deterioration factors in all model years for which certification has not yet been granted. However, the manufacturer may elect to replace the emission test results from the original durability-data fleet with results from an additional fleet.

(ii) At the request of the manufacturer, the Administrator shall select durability-data engine configurations for the additional fleet, equal in number to the original fleet. Once notified of the Administrator's selection, the manufacturer may select a specific production engine for each configuration from the current model year and begin to accumulate dynamometer and in-vehicle service on those engines. The manufacturer shall meet the requirements of this section in conducting this service accumulation.

(iii) The manufacturer is not required to wait until the original fleet completes service accumulation before beginning an additional fleet. Multiple additional fleets are allowed. No two fleets for a single combination may contain engines produced in a single model year.

(iv) Emission test results from the original fleet shall be used to calculate all official in-use deterioration factors until an additional fleet has completed service accumulation. Once an additional fleet has done so, emission test results from that additional fleet shall be used to calculate deterioration factors until another additional fleet of later model year engines has completed service accumulation.

(7) If the manufacturer states in its application for certification that an engine family-control system combination, for which it seeks a certificate of conformity with applicable standards of § 86.083-10 or § 86.083.11 for the 1983 or 1984 model year will not be produced past the 1984 model year, the Administrator shall waive the requirement for in-vehicle service accumulation for that combination.

(8)(i) The Administrator may waive the requirement for in-vehicle service accumulation for a small volume manufacturer (one which meets the requirements of § 86.083-24(e)), for any engine family-control system combination which the Administrator determines may be expected to have exhaust emission deterioration characteristics similar to those of another combination (produced by any manufacturer) which is undergoing or has completed in-vehicle service accumulation. The Administrator will base the determination on the physical similarity of the two combinations and on the service applications to which engines belonging to the combinations are commonly put. If the Administrator does waive in-vehicle service accumulation, the in-use deterioration factors derived from the other combination which is undergoing or has comleted in vehicle service accumulation) will be applied to the combination for which the requirement is waived.

(ii) If a manufacturer for which the Administrator has previously waived in-vehicle service accumulation under paragraph (b)(8)(i) of this section ceases to be a small volume manufacturer, the Administrator may withdraw the waiver and require the manufacturer to begin in-vehicle service accumulation using production engines from the model year in which the manufacturer ceased to be a small volume manufacturer. In-use deterioration factors derived from the other combination (which has been undergoing or has completed in-vehicle service accumulation) shall continue to be used until one engine in the manufacturer's own fleet has reached the 30,000-mile point.

(9)(i) Data from all emission tests (including voided tests) shall be air posted to the Administrator within 72 hours (or delivered within 5 working days). The manufacturer shall furnish to the Administrator an explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. The Administrator may require emission tests at points in addition to those specified in this subpart. In addition, all test data shall be complied and provided to the Administrator in accordance with § 86.083-23. Where the Administrator conducts a test on a durability-data engine at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29-67.

(10) Whenever the manufacturer proposes to operate and test an engine which may be used for emission or durability data, it shall provide such information concerning components used on the engine as the Administrator may require and make the engine available for such testing under § 86.083-29 as the Administrator may require, before beginning to accumulate hours on the engine. Failure to comply with this requirement will invalidate all test data later submitted for this engine.

(11) Once the manufacturer begins to operate an emission-data or durability-data engine, as indicated by compliance with paragraph (b)(10) of this section, it shall continue to run any emission-data engine to 125 hours plus or minus eight hours and shall complete the in-vehicle service accumulation as required by this section. The manufacturer may not remove a durability-data engine from the durability fleet except as required or permitted by this section.

(12)(i) The Administrator may elect to test any test engine at any time during the service accumulation and testing procedure. In such cases the manufacturer shall provide the engine(s) to the Administrator with all information necessary to conduct the testing.

(ii) The test procedures (Subparts N and P of this part for gasoline-fueled engines, and Subpart I, N, and P of this part for diesel engines) will be followed by the Administrator. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(13) Emission testing of any type with respect to any certification engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

14. A new § 86.083-27 is proposed to read:

§ 86.083-27 Special test procedures.

(a) (See paragraph (a) of § 86.079-27).

(b) For heavy-duty engines:

(1) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures, other than those set forth in this subpart, for any motor-vehicle engine, which he determines is not susceptible to satisfactory testing by the procedures set forth herein or in Subparts N, I, and P of this part.

(2) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a motor-vehicle engine is not susceptible to satisfactory testing by the procedures set forth herein, the Administrator will reject the applicable portions of the application. The Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.083-22(c).

15. A new § 86.083-28 is proposed to read:

§ 86.083-28 Compliance with emission standards.

(a) (See paragraph (a) of § 86.079-28).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.083-10 or for diesel engines in § 86.083-11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency generallly decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission-data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new engine with emission standards, based on preliminary deterioration factors supplied by the manufacturer. The procedure described here shall be used for the first model year for which the manufacturer applies for a certificate of conformity with the standards of § 86.083-10 or § 86.083-11 for an enging family-control system combination. The procedure also shall be used for the following model year if no durability-data engine in the combination has accumulated at least 30,000 miles of in-vehicle service three months prior to the new model year, or if the Administrator has waived the requirement for in-vehicle service accumulation under the waiver provision of § 86.083-26(b)(7).

(ii) Separate preliminary exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for transient HC, CO, and NOx and for idle HC and CO. For diesel engines, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and the peak opacity (designated as "C").

(iii)(A) For transient HC, CO, and NOx and for idle HC, and CO, the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29-67 for each emission-data engine.

(5)(i) Paragraph (b)(5) of this section describes the procedure for determining compliance of a new engine with emission standards, based on partial or full results of in-vehicle service accumulation. The procedure described here shall be used for any engine family-control system combination which has been certified in a previous model year and for which at least one engine in the durability-data fleet has accumulated 30,000 miles of in-vehicle service three months prior to the new model year.

(ii) Separate emission deterioration factors shall be determined from the emission results collected to date from the durability-data engines in each engine-system combination. Separate factors shall be established for transient HC, CO and NOx and for idle HC and CO. For diesel engines, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and the peak opacity (designated as "C").

(A) The applicable results to be used in determining the deterioration factors for each combination shall be:

(*1*) The results of the emission tests conducted on durability-data engines after completion of 125 hours of dynamometer service accumulation. The mileage point for these results shall be taken to be 4,000 miles for the purpose of this section.

(*2*) The results of all emission tests conducted on durability-data engines during in-vehicle service accumulation, as required or permitted by § 86.083-26(b)(5)(vi), except those excluded under §§ 86.083-25(c)(1)(ix) or 86.083-26(b)(5)(vii). The mileage points for these results shall be adjusted by the addition of 4,000 miles for the purpose of this section.

(B) All applicable emission results for (1) transient HC, (2) transient CO, (3) transient NOx, (4) idle HC, (5) idle CO, (6) acceleration smoke ("A"), (7) lugging smoke ("B"), and (8) peak smoke ("C"), shall be plotted as a function of miles of in-vehicle service. Separate plots shall be made for each durability-data engine which has been tested in the 30,000 to 35,000 mileage interval. Emission results from engines which have not yet been tested in this interval shall not be used in the calculation of the deterioration factors. The best fit straight lines, fitted by the method of least squares, shall be drawn through these data points.

(C) Deterioration factors for each engine contributing emission results to the calculation, for transient HC, CO, and NOx and for idle HC and CO, shall be calculated by whichever of the following two methods results in the larger factor:

(*1*) Divide exhaust emissions extrapolated using the best fit straight line (or interpolated if in-vehicle service accumulation is complete) to the useful life point of each engine by the exhaust emissions interpolated to the 4,000-mile point. A factor less than one shall be set equal to one.

(*2*) Divide the largest emission test result (or the largest average of results at a single test point if the manufacturer conducted multiple tests at each point) for each engine by the result of the test (or the average of the tests) of the engine after 125 hours of dynamometer service accumulation. A factor less than one shall be set equal to one.

(D) The single deterioration factor for each engine family-control system combination, for each of transient HC, CO, and NOx and idle HC and CO, shall be the arithmetic mean of the corresponding factors for each engine as determined in paragraph (b)(5)(ii)(C) of this section.

(E) Deterioration factors for each engine contributing emission results to the calculation, for acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), shall be calculated by whichever of the following two methods results in the larger factor:

(*1*) Subtract exhaust emissions interpolated to the 4,000-mile point from exhaust emissions extrapolated (or interpolated if in-vehicle service accu-

mulation is complete) to the useful life point of each engine. A negative factor shall be set equal to zero.

(2) Subtract the result of the test (or the average of the results of the tests if the manufacturer conducted more than one test) of each engine after 125 hours of dynamometer service accumulation from the largest emission test result (or the largest average of the results at a single test point) for the engine. A negative factor shall be set equal to zero.

(F) The single deterioration factor for each engine family-control system combination, for each of acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), shall be the arithmetic mean of the corresponding factors for each engine as determined in paragraph (b)(5)(ii)(E) of this section.

(iii)(A) For transient HC, CO, and NOx and for idle HC and CO, the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by multiplication by the appropriate deterioration factor.

(B) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by the addition of the appropriate deterioration factor.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (b)(5)(iii) of this section rounded to two significant figures in accordance with ASTM E 29-67 for each emission-data engine.

(6) [Reserved]

(7) Every test engine of an engine family must comply with all applicable standards, as determined in paragraph (b)(4)(iv) or (b)(5)(iv) of this section, before any engine in that family will be certified.

16. A new § 86.083-29 is proposed to read:

§ 86.083-29 Testing by the Administrator.

(a) (See paragraph (a) of § 86.081-29).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The Administrator may require that any one or more of the test engines be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test engine the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine at that prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test engine at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided*, that if the Administrator makes a determination based on testing under paragraph (b)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer: *And further provided*, that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-date engine which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.083-22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.083-22(e)(3)(i), prior to the performance of any tests to determine whether such engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.083-23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use engines.

(*2*) For those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.083-22(e)(1), the emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.083-35(a)(2)(iii)) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the engine shall be used as an emission-data engine.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(ii)(A) of this section would cause the emission-data engine to fail due to excessive 125-hour emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed.

(*1*) The manufacturer may request a retest. Before the retest, those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.083-22(e)(1) may be readjusted to the manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment in accordance with § 86.083-22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. Other maintenance or repairs may be performed in accordance with 86.083-25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The engine will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data engine.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether an emission-data engine would fail, the manufacturer may request a retest in accordance with the provision of paragraph (b)(3)(iii)(B) (*1*) and (*2*) of this section. If the manufacturer does not promptly make such a request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine from the test premises.

17. A new § 86.083-30 is proposed to read:

§ 86.083-30 Certification.

(a)(1) (See paragraph (a)(1) of § 86.079-30).

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part. Each such certificate shall contain the following language:

This certificate covers only those new motor vehicles (or new motor vehicle engines) which conform, in all material respects, to design specifications that applied to those vehicles (or engines) described in the application for certification and which are produced during the model —— year production period of the said manufacturer, as defined in 40 CFR § 86.079-2.

It is a term of this certificate that the manufacturer shall consent to all inspection described by 40 CFR §§ 86.078-7(c), 86.606, and 86.1006 and authorized in a warrant or court order. Failure to comply with the requirements of such a warrant or court order may lead to revocation or suspension of this certificate as specified in 40 CFR § 86.083-30 (c), (d), or (e). It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.079-30 (c), (d), or (e).

(a)(3) through (b)(1)(i). (See paragraphs (a)(3) through (b)(1)(i) of § 86.079-30).

(ii) *Heavy-Duty Engines.* (A) A gasoline-fueled emission-data test engine selected under § 86.083-24(b)(2) (ii) and (iv) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(B) A gasoline-fueled emission-data test engine selected under § 86.083-24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission-data test engine selected under § 86.083-24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission-data test engine selected under § 86.083-24(b)(3) (iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(E) The durability-data test engines selected under § 865.083-24(c)(2)(ii) shall together represent all engines of the same engine-system combination.

(b)(2) through (c)(1)(iv). (See paragraphs (b)(2) through (c)(1)(iv) of § 86.079-30).

(v) The manufacturer fails to select heavy-duty durability-data engines of the appropriate engine family-control system combination within two months of the start of production of the appropriate configurations, as required by § 86.083-24(c)(2)(ii), or the manufacturer fails to install the durability-data engines into host vehicles and place the host vehicles into service within one month of selecting the engines, as required by § 86.083-26(b)(5)(i).

(c)(2) through (c)(6). (See paragraphs (c)(2) through (c)(6) of § 86.079-30).

(d) *For light-duty vehicles and light-duty trucks.*

(d)(1) through (d)(6). (See paragraphs (d)(1) through (d)(6) of § 86.079-30.)

(e) *For heavy-duty vehicles and engines.*

(1) Notwithstanding the fact that any engine configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (e)(1) (i), (ii), or (vii) of this section where such refusal or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturers to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

18. A new § 86.083-35 is proposed to read:

§ 86.083-35 Labeling.

(a) through (a)(2)(ii) (See paragraphs (a) through (a)(2)(ii) of § 86.079-35).

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: IMPORTANT ENGINE INFORMATION;

(a)(2)(iii)(B) through (a)(2)(iii)(G) (see paragraphs (a)(2)(iii)(B) through (a)(2)(iii)(G) of § 86.079-35).

(H) The prominent statement: "(Manufacturer's corporate name) has determined that this engine has an average useful life before retirement or rebuild of —— miles or —— hours of operation, whichever occurs first. This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines, for this period." The manfacturer may alter this statement only to express the useful life in terms other than miles or hours (e.g., years, or hours only).

(a)(2)(iv) through (d) (See paragraphs (a)(2)(iv) through (d) of § 86.079-35).

(e) Incomplete heavy-duty vehicles having an 8,500-pound gross vehicle weight rating or less shall have the following prominent statement printed on the label required in paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(H) of this section: "(Manfacturer's corporate name) has determined that this engine has an average useful life befre retirement or rebuild of——miles or——hours of operation, whichever occurs first. This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area greater than 46 square feet, for this period."

(f) (See paragraph (f) of § 86.079-35).

19. A New § 86.083-38 is proposed to read:

§ 86.083-38 Maintenance instructions.

(a) through (d) (See paragraphs (a) through (d) of § 86.079-38.)

(e) *For heavy-duty engines.*

(1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.083-25(c), and shall explain the conditions under which maintenance to emission-related components for which visual signals are employed is to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance). Scheduled maintenance in addition to that performed on the durability-data engine under § 86.083-25(c) may be recommended for reasons such as to offset the effects of operating conditions which differ from the conditions experienced by the durability-data engines or to increase the life of the engine beyond the useful life as determined by the manufacturer. The instructions may schedule maintenance on a calendar time basis, mileage basis, engine service time basis, or combinations of each.

(2) Such instructions shall specify the useful life of the engine as determined by the manufacturer. This useful life shall be expressed as a period of engine or vehicle operation or as an equivalent vehicle mileage (or both). The manufacturer shall also include in the instructions an explanation of the method(s) used to determine the useful life of the engine. The explanation shall be in clear, nontechnical language that is understandable to the ultimate purchaser.

20. A new § 86.085-23 is proposed to read:

§ 86.085-23 Required data.

(a) through (b)(2) (See paragraphs (a) through (b)(2) of § 86.083-23).

(3) For each heavy-duty engine family-emission control system combination for which application for certification is made for the first time, preliminary emission deterioration factors and all test data that are derived from testing described under § 86.083-21(b)(4)(iii), designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.083-30, will meet the emission standards in effect for those engines, for the useful life of the engines.

(c) through (e) (See paragraphs (c) through (e) of § 86.083-23).

21. A new § 86.085-26 is proposed to read:

§ 86.085-26 Mileage and service accumulation; emission measurements.

(a) through (b)(6) (See paragraphs (a) through (b)(6) of § 86.083-26).

(7) [Reserved]

(b)(8) through (b)(13) (See paragraphs (b)(8) through (b)(13) of § 86.083-26).

22. A new § 86.085-28 is proposed to read:

§ 86.085-28 Compliance with emission standards.

(a) through (b)(3) (See paragraphs (a) through (b)(3) of § 86.083-28).

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new engine with emission standards, based on preliminary deterioration factors supplied by the manufacturer. The procedure described here shall be used for the first model year for which the manufacturer applies for a certificate of conformity with the standards in effect for an engine family-control system combination. The procedure also shall be used for the following model year if no durability-data engine in the combination has accumulated at least 30,000 miles of in-vehicle service by the time the determination of compliance is made.

(b)(4)(ii) through (b)(8) (See paragraphs (b)(4)(ii) through (b)(8) of § 86.083-28).

23. A new Subpart K is proposed to be added to Part 86 and reads as follows:

Subpart K—Selective Enforcement Auditing and Production Compliance Auditing of New Gasoline-Fueled and Diesel Heavy-Duty Engines

Sec.

86.1001-83—Applicability.
86.1002-83—Definitions.
86.1003-83—Test orders.
86.1004-83—Testing by the Administrator.
86.1005-83—Maintenance of records; submittal of information.
86.1006-83—Entry and access.
86.1007-83—Sample selection.
86.1008-83—Test procedures.
86.1009-83—Calculation and reporting of test results.
86.1010-83—Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.
86.1011-83—Production Compliance Auditing.
86.1012-83—Suspension and revocation of certificates of conformity.
86.1013-83—Noncomformance penalties.
86.1014-83—Hearings on suspension, revocation and voiding of certificates of conformity.

Subpart K—Selective Enforcement Auditing and Production Compliance Auditing of New Gasoline-Fueled and Diesel Heavy Duty Engines

§ 86.1001-83 Applicability.

The provisions of this subpart are applicable for 1983 and later model year gasoline-fueled and diesel heavy-duty engines.

§ 86.1002-83 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act.

"Acceptable Quality Level" (AQL) means the maximum percentage of failing engines that, for purposes of sampling inspection, can be considered satisfactory as a process average.

"Compliance level" means the emissions level at the 90th percentile point for a population of heavy-duty vehicles or engines subject to Production Compliance Audit testing pursuant to this subpart. A compliance level can be determined for each pollutant for which an upper limit has been established.

"Configuration" means a subclassification, if any, of an engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, and other parameters which may be designated by the Administrator.

"In the Hands of the Manufacturer" means that engines are still in the possession of the manufacturer and have not had their bills of lading transferred to another person for the purpose of transporting.

"Upper limit" means the emission level for a specific heavy-duty engine pollutant beyond which certification for that engine can not be granted or for which the certificate of conformity can be suspended. The upper limits will be established by amendments to this part.

§ 86.1003-83 Test orders.

(a) The Administrator will require any testing under this subpart by means of a test order addressed to the manufacturer.

(b) The test order will be signed by the Assistant Administrator for Enforcement or his designee. The test order will be delivered in person by an EPA Enforcement Officer to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signs the Application for Certification submitted by the manufacturer pursuant to the requirements of the applicable sections of Subpart A of this part. Upon receipt of a test order, the manufacturer shall comply with all of the provisions of this subpart and instructions in the test order.

(c) The test order will specify the engine configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines must be selected, the time and location at which engines must be selected, and the procedure by which engines of the specified configuration must be selected. The test order may include alternative configurations to be selected for testing in the event that engines of the first specified configuration are not available for testing because such engines are not being manufactured at the specified assembly plant, not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facility. In addition, the test order may include other directions or information essential to the administration of the required testing.

(d) A manufacturer may indicate preferred assembly plants or associated storage facilities for the various engine families produced by the manufacturer for selection of engines in response to a test order. This shall be accomplished by submitting a list of engine families and the corresponding assembly plants or associated storage facilities from which the manufacturer desires to have engines selected for testing. In order that a manufacturer's preferred location be considered for inclusion in a test order for a configuration of a particular engine family, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may order testing at other than a preferred plant.

(e) Upon receipt of a test order, a manufacturer shall proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator will not issue to a manufacturer more Selective Enforcement Auditing (SEA) test orders than an annual limit determined by the following:

(i) For heavy-duty gasoline engine manufacturers, the number determined by dividing the projected sales for that year, as made by the manufacturer in its Application for Certification, by 30,000 and rounding to the nearest whole number, unless the projected sales are less than 15,000, in which case the number is one;

(ii) For heavy-duty diesel engine manufacturers, the number determined by dividing the projected sales for that year, as made by the manufacturer in its Application for Certification, by 10,000 and rounding to the nearest whole number, unless the projected sales are less than 5,000, in which case the number is one; or

(iii) For manufacturers producing both gasoline and diesel heavy-duty engines, the numbers determined by applying paragraphs (f)(1)(i) and (f)(1)(ii) of this section apply individually for gasoline and diesel engines.

(2) Any SEA test order for which the configuration fails in accordance with § 86.1010-83 or for which testing is not completed will not be counted against the annual limit.

(3) SEA test orders issued on the basis of any evidence which indicates noncompliance of a configuration with the AQL will not count toward the annual limit. An SEA test order issued on this basis will include a statement as to the reason for its issuance.

§ 86.1004-83 Testing by the Administrator.

(a) The Administrator may require by test order that engines of a specified configuration be selected in a manner designated by him and submitted to him at such place as he may designate for the purpose of conducting emission tests. Such tests shall be conducted in accordance with § 86.1008-83 of these regulations to determine whether engines manufactured by the manufacturer conform with the regulations with respect to which the certificate of conformity was issued.

(b)(1) Whenever the Administrator conducts a test on a test engine or the Administrator and manufacturer each conduct a test on the same test engine, the results of the Administrator's test shall comprise the official data for that engine.

(2) Whenever the manufacturer conducts all tests on a test engine, the manufacturer's test data will be accepted as the official data: *Provided*, That if the Administrator makes a determination based on testing under paragraph (a) of this section there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) In the event that testing conducted under paragraph (a) of this section demonstrates a lack of agreement under paragraph (b)(2) of this section, the Administrator will:

(1) Notify the manufacturer in writing of his determination that the test facility is inappropriate for conducting the tests required by the subpart and the reasons therefor, and

(2) Reinstate any manufacturer's data upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

§ 86.1005-83 Maintenance of records; submittal of information.

(a) The manufacturer of any new heavy-duty engine subject to any of the provisions of this subpart shall establish, maintain, and retain the fol-

lowing adequately organized and indexed records:

(1) *General records.*

(i) A description of all procedures used to test engines pursuant to a test order issued under this subpart.

(ii) Test equipment; pre-test data; test data. Reference Subparts N and P for requirements for equipment and test data recording.

(2) *Individual records.*

(i)(A) Identification and description of all engines tested pursuant to a test order issued under this subpart.

(B) A description of all emission control systems installed on or incorporated in each test engine.

(ii) A properly filed application for certification, following the format prescribed by the EPA for the appropriate model year, fulfills both requirements of paragraph (a)(2)(i) of this section.

(iii) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly), including the following chart records or exact copies thereof:

(A) The zero, span, and exhaust gas traces associated with each analyzer;

(B) The temperature trace of the heated sample line to the hydrocarbon detector (diesel only);

(C) In the case of diesel engine smoke emission testing, the engine load and RPM traces and a trace for the throttle position shall be identified, as well as any other applicable data.

(D) The smoke opacity trace for diesel engine smoke emission testing.

(iv) Individual worksheets and/or other documentation relating to each such test, or exact copies thereof.

(v) The date, time, and location of each test; the number of hours of service accumulated on each engine when the test began and ended; and the names of all personnel, including supervisory personnel, involved in the conduct of the test.

(vi) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date and time of the repair, the reason for it, the person authorizing it, and names of all personnel involved in the supervising and performance of the repair.

(vii) The date when the engine was shipped from the assembly plant or associated storage facility and when it was received by the test facility.

(viii) A brief description of any significant events, commencing with the test engine selection process, but not described by any entry under one of the previous headings, including such extraordinary events as engine damage during shipment.

(b) All records required to be maintained under this subpart shall be retained by the manufacturer for a period of one (1) year after completion of all testing in response to a test order. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure: *Provided*, That in every case all the information contained in the hard copy shall be retained.

(c) Heavy-duty engine manufacturers shall submit to the Administrator on a quarterly basis no later than thirty days after the close of each calendar quarter or other reporting schedule as approved by the Administrator all emission data, whether or not from FTP testing, from testing of production engines. The following information shall be provided with respect to such engines:

(1) Description of quality audit or other program under which production engines are selected including a description of sampling plans, method of sample selection and sampling rates.

(2) EPA engine family.

(3) Engine identification number.

(4) Configuration.

(5) Engine model year and build date.

(6) Number of hours of service accumulated on engine prior to testing.

(7) Description of any preparation, maintenance, modification or repair on test engines.

(8) Emission test results for each valid test. If the above information is available on Automatic Data Processing (ADP) equipment, it shall be submitted on an ADP storage device such as magnetic tape, magnetic disc, punched cards, etc. EPA will return ADP equipment submitted by the manufacturer or, upon a request by the manufacturer, furnish the necessary ADP storage devices. Information submitted once need not be submitted again if there are no subsequent changes.

(d) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the following information with regard to engine production:

(1) Number of engines, by configuration and assembly plant, scheduled for production for the time period designated in the request.

(2) Number of engines, by configuration and assembly plant, produced during the time period designated in the request which are complete for introduction into commerce.

(e) Nothing in this section shall limit the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(f) All reports, submissions, notifications, and requests for approvals made under this subpart shall be addressed to:

Director, Mobile Source Enforcement Division, U.S. Environmental Protection Agency, EN-340, 401 M Street S.W., Washington, D.C. 20460.

§ 86.1006-83 Entry and access.

(a) In order to allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart and a test order issued thereunder, EPA Enforcement Officers are authorized to enter during operating hours and upon presentation of credentials any of the following:

(1) Any facility where any engine to be introduced into commerce or any emission related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a test order or any procedures or activities connected with such tests are or were performed;

(3) Any facility where any engine which is being tested, was tested, or will be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in subsection (a) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspects of such engine manufacture, assembly, storage, testing and other procedures, and the facilities in which such procedures are conducted;

(2) To inspect and monitor any part or aspect of such test procedures or activities, including, but not limited to, monitoring engine selection, preparation, service accumulation, preconditioning, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine in compliance with a test order; and

(4) To inspect and photograph any part or aspect of any such engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without charge from those in charge of a facility to help them discharge any function listed in this subpart and are authorized to request the recipient of a test order to make arrangements with those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the recipient controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforce-

ment Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the recipient of the test order or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(e) EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section shall be permitted to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. A recipient of a test order is required to cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the recipient controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry and access as authorized in this section only upon the consent of the recipient or the test order of the party in charge of the facilities in question.

(f) It is not a violation of this Part of the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section:

(1) "Presentation of Credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation, or engine assembly is taking place, or all times during which testing, repair, service accumulation, preparation or compilation of records, or any other procedure or activity related to testing, or to engine manufacture or assembly is being carried out in a facility.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on an EPA Enforcement Officer's request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions. Any employee whom an EPA Enforcement Officer requests the manufacturer to cause to appear for questioning will be entitled to be accompanied, represented and advised by counsel.

§ 86.1007-83 Sample selection.

(a) Engines comprising a test sample which are required to be tested, pursuant to a test order issued in accordance with this subpart, will be selected at the location and in the manner specified in the test order. If a manufacturer determines that the test engines can not be selected in the manner specified in the test order, an alternative selection procedure may be employed: *Provided,* That the manufacturer requests approval of such a procedure in advance of the start of test sample selection and that the Administrator approves such a procedure.

(b) The test engines of the configuration selected for testing shall have been assembled by the manufacturer for distribution in commerce using his normal mass production processes. If the test engines are selected at a location where they do not have their operational and emission control systems installed, the test order will specify the manner and location for selection of components to complete assembly of the engines and the manner in which assembly is to be completed.

(c) No quality control, testing, or assembly procedures shall be used on the completed test engine or any portion thereof, including parts and subassemblies, that will not be used during the production and assembly of all other engines of that configuration: *Except,* That the Administrator may approve a deviation in the normal assembly procedures pursuant to paragraph (b) of this section.

(d) The test order may specify that EPA Enforcement Officers, rather than the manufacturer, will select the test engines according to the method specified in the test order.

(e) The test order will specify the order in which test results are to be used in applying the sampling plan.

(f) The manufacturer shall keep on hand all untested engines comprising the test sample until such time as a pass or fail decision is reached in accordance with § 86.1010-83(d) or § 86.1011-83(d) or until such time as the compliance level is determined in accordance with § 86.1011-83(g), whichever is applicable.

§ 86.1008-83 Test procedures.

(a) The prescribed test procedure is the Federal Test Procedure as described in Subpart N, I and P of this Part.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the engines selected for testing and shall not perform any emission tests on engines selected for testing pursuant to the test order unless such adjustment, repair, preparation, modification, and/or tests are documented in the manufacturer's engine assembly and inspection procedures, and are actually performed or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1983 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing in accordance with § 86.083-22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.083-22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use engines.

(c) The manufacturer may accumulate up to 125 hours of service on each selected engine prior to performing exhaust emission testing. Service accumulation may be performed in any manner the manufacturer desires.

(1) The manufacturer shall accumulate service at a minimum rate of 16 hours during each 24 hour period, unless otherwise provided by the Administrator.

(2) Service accumulation shall be performed on a sufficient number of test engines during each 24 hour period to assure that the number of engines tested per day fulfills the requirements of paragraph (g) of this section.

(d) No maintenance will be performed on test engines after selection for testing nor will any test engine substitution or replacement be allowed, unless requested of the Administrator by the manufacturer and approved by the Administrator in advance of the performance of any maintenance or engine substitution.

(e) The manufacturer will be allowed 24 hours to ship test engines from the assembly plant or associated storage facility to the test facility if the test facility is not located at or in close proximity to the plant or storage facility: *Except*, That the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) In the event that an engine is incapable of completing the service accumulation or emission tests because of engine malfunction, the manufacturer may request that the Administrator authorize him to repair or replace the engine. Any replacement engines will be selected in a manner prescribed in the test order.

(g) Within one working day of receipt of the test order, the manufacturer shall notify the Administrator which test facility will be used to comply with the test order. If no test cells are available at a desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(1) Heavy-duty gasoline engine manufacturers with projected annual sales of 30,000 or greater, and heavy-duty diesel engine manufacturers with projected annual sales of 10,000 or greater, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of two engines per 24 hour period, including voided tests.

(2) Heavy-duty gasoline engine manufacturers with projected annual sales of less than 30,000, and heavy-duty diesel engine manufacturers with projected annual sales of less than 10,000, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of one engine per 24 hour period, including voided tests.

(3) The Administrator may approve a longer period of time for conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

(h) The manufacturer shall perform test engine selection, shipping, preparation, service accumulation, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer will be permitted to retest any engines tested during a Selective Enforcement Audit once a fail decision for the audit has been reached in accordance with § 86.1010-83(d) based on the first test on each engine. Each engine can be tested a total of three times but they all must be tested the same number of times. The manufacturer may accumulate additional service before conducting a retest, although the total amount of service accumulation on each engine prior to testing shall not exceed 125 hours.

§ 86.1009-83 Calculation and reporting of test results.

(a) Initial test results shall be calculated following the Federal Test Procedure specified in paragraph (a) of § 86.1008-83.

(b) Final test results shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding in accordance with ASTM E29-67 to two places to the right of the decimal point.

(c) *Final deteriorated test results.* For the purpose of this paragraph, if a deterioration factor as computed during the certification process is less than one, that deterioration factor shall be one.

(1) The final deteriorated test results for each engine tested according to Subpart N or P of this Part shall be calculated by multiplying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine belongs.

(2) The final deteriorated test results for each engine tested according to Subpart I of this Part shall be calculated by adding the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine belongs, to the final test results.

(3) The final deteriorated test results shall be rounded to two significant figures in accordance with ASTM E29-67.

(d) Within five working days after completion of testing of all engines pursuant to a test order, the manufacturer shall submit to the Administrator a report which shall include the following:

(1) The location and description of the manfacturer's exhaust emission test facilities which were utilized to conduct testing reported pursuant to this section.

(2) The applicable standards against which the engines were tested.

(3) Deterioration factors for the engine family to which the selected configuration belongs.

(4) A description of the engine and any emission related component selection method used and the name of the manufacturer's representative in charge of the selection process.

(5) For each test conducted;

(i) Test engine description, including:

(A) Configuration and engine family identification,

(B) Year, make, and build date,

(C) Engine identification number, and

(D) Number of hours of service accumulated on engine prior to testing.

(ii) Location where service accumulation was conducted and description of accumulation procedure and schedule.

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all exhaust emission tests, whether valid or invalid, and the reason for invalidation, if applicable.

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all production engines.

(v) Where a replacement engine was authorized by the Administrator, the reason for the replacement and the information in (iii) above, if any, for the replacement engine.

(vi) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued.

(6) The following statement and endorsement: This report is submitted pursuant to section 206 and section 208 of the Clean Air Act. All testing for which data is reported herein was conducted in strict conformance with applicable regulations under 40 CFR Part 86 et seq. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is, to the best of

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(Company name)

knowledge, true and accurate. I am aware of the penalties associated with

violations of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

§ 86.1010-83 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits (SEA).

(a) The prescribed acceptable quality level is 10 percent.

(b) A failed engine is one whose final deteriorated test results pursuant to paragraph 86.1009-83(c), for one or more of the applicable exhaust pollutants, exceed the applicable emission standard or compliance level as prescribed in paragraph (g) of § 86.1011-83, if applicable.

(c) The manufacturer shall test engines comprising the test sample until a pass or fail decision is reached for all pollutants, or a fail decision is reached for a pollutant for which no upper limit is established in this part, or a fail decision is reached with respect to the upper limit according to paragraph (f) of this section. A pass decision is reached when the cumulative number of failed engines, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines tested. A fail decision is reached when the cumulative number of failed engines for each pollutant is greater than or equal to the fail decision number appropriate to the cumulative number of engines tested. The pass and fail decision numbers associated with the cumulative number of engines tested shall be determined by use of the tables in Appendix X of this part appropriate for the annual projected sales as made by the manufacturer in its Application for Certification. In the Tables in Appendix X, sampling plan "state" refers to the cumulative number of engines tested.

(d) Passing or failing of an SEA audit takes place when the decision is made on the last engine required to make a decision under paragraph (c) of this section.

(e) The administrator may terminate testing earlier than required in paragraph (c) of this section.

(f) If a fail decision is reached in accordance with paragraph (d) of this section, then a determination will also be made based on the test results up to that point whether the configuration fails with respect to the upper limit, if one has been established.

(g) If a manufacturer conducts a follow-up SEA audit pursuant to paragraph (j)(2) or (k)(2) of § 86.1012-83 subsequent to suspension or revocation of a certificate of conformity for the purpose of reinstatement or reissuance of the certificate, the provisions of this section shall apply except that the tables in Appendix XI shall be utilized.

(h) Whenever a manufacturer conducts an SEA audit pursuant to a test order issued for a configuration whose official certification test results exceeded one or more standards, the provisions of this section shall apply except that the tables in Appendix XI shall be utilized.

(i) If a manufacturer is issued a test order to conduct an SEA of a configuration which serves as a replacement for a configuration which had its certificate of conformity suspended or revoked for failure of an SEA, the provisions of this section shall apply except that the tables in Appendix XI shall be utilized.

(j) A manufacturer may request that a Selective Enforcement Audit be conducted on a configuration on which the manufacturer is paying a nonconformance penalty pursuant to § 86.1013-83 in order to demonstrate that the engines of the configuration have been brought into compliance with the applicable emission standards. The provisions of this section shall apply except that the tables in Appendix XI shall be utilized.

§ 86.1011-83 Production Compliance Auditing.

(a) During a model year in which certification above the heavy-duty engine emission standards for one or more exhaust pollutants is specifically permitted by amendments to this part, a manufacturer can elect to conduct a Production Compliance Audit (PCA) for each configuration which did not pass a Selective Enforcement Audit in accordance with paragraph (d) of § 86.1010-83 with respect to a pollutant for which an upper limit had been established in this part and for which the manufacturer does not intend to make a design change or changes to the engine and/or emission control system as described in the Application for Certification or does not intend to institute a quality control procedure to remedy the noncomformity.

(b) Production Compliance Audits shall be initiated upon a written request from the manufacturer. All applicable conditions in the original SEA test order shall continue to apply. Test results from the SEA audit shall be utilized in establishing a noncompliance level or reaching a fail decision for the PCA audit.

(c) Unless specified as being appropriate only to Selective Enforcement Auditing or to model years in which certification above the emission standards for heavy-duty engines is not specifically permitted by regulations, all other sections of this subpart shall be applicable to Production Compliance Audit testing.

(d) The manufacturer shall test consecutive engines comprising the test sample until a fail decision at the upper limit is reached for each pollutant for which an upper limit has been established or the maximum sample size has been tested. A fail decision is reached for a pollutant for which an upper limit has been established when the number of engines whose final deteriorated test results exceed the upper limit for that pollutant is equal to or greater than the fail decision number. The fail decision number and maximum test sample size are determined from the tables in Appendix XII.

(e) A fail decision is reached for a pollutant for which no upper limit has been established when the number of engines whose final deteriorated test results exceed the standard for that pollutant is equal to or greater than the fail decision number in Table II of Appendix XII.

(f) The Administrator may terminate testing earlier than required in paragraph (d) of this section.

(g) If the maximum number of engines were tested pursuant to paragraph (d) of this section and a fail decision under paragraph (d) was not made for one or more pollutants for which an upper limit has been established, a compliance level shall be established for each such pollutant according to the following procedure:

(1) For each pollutant, rank all the final deteriorated test results obtained for that pollutant in order from the lowest to the highest value.

(2)(A) If using code letter A in Appendix XII, the sixteenth lowest test result in the sequence is the compliance level.

(B) If using code letter B in Appendix XII, the nineteenth lowest test result in the sequence is the compliance level.

(C) If using code letter C in Appendix XII, the twenty-fourth lowest test result in the sequence is the compliance level.

(D) If using code letter D in Appendix XII, the twenty-fifth lowest test result in the sequence is the compliance level.

§ 86.1012-83 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine failing pursuant to paragraph (b) of § 86.1010-83 effective from the time that testing of that engine is completed.

(b) During those model years in which heavy-duty engines are not permitted by this part to exceed emission standards for one or more pollutants, the Administrator may suspend the certificate of conformity for a configuration which does not pass an SEA,

pursuant to paragraph § 86.1010-83(c), based on the first test or all tests conducted on each engine or does not pass a PCA audit with respect to the standards for those pollutants for those engines produced at that plant. Such suspension shall not occur before ten days after failure to pass the audit.

(c) During those model years in which heavy-duty engines are permitted by amendments to this part to exceed the emission standards for one or more pollutants, the Administrator may suspend the certificate of conformity for a configuration which does not pass an SEA based on the first test or all tests conducted on each engine or does not pass a PCA audit with respect to the upper limits for those pollutants for those engines produced at that plant. Such suspension shall not occur before ten days after failure to pass the audit.

(d) If a manufacturer does not elect to conduct a PCA audit for a configuration pursuant to § 86.1011-83(a), the Administrator may suspend the certificate of conformity for all engines of that configuration produced at the plant where the configuration failed the SEA audit. A suspension for failure to elect a PCA pursuant to § 86.1011-83(a) shall not occur before ten days after failure to pass the audit.

(e) If the results of testing pursuant to these regulations indicate that engines of a particular configuration produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that configuration for engines manufactured by the manufacturer at all other plants.

(f) The Administrator may suspend the certificate of conformity for all engines of a configuration produced at all plants if a manufacturer fails to pay a nonconformance penalty on all engines for which a penalty is applicable within the time prescribed in § 86.1013-83(c).

(g) The Administrator will notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part: *Except*, That the certificate is immediately suspended with respect to any failed engines as provided for in paragraph (a) of this section.

(h) The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b), (c) or (e) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change or changes to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(i) One a certificate has been suspended for a failed engine as provided for in paragraph (a) of this section, the manufacturer must take the following actions:

(1) Before the certificate is reinstated for that failed engine,

(i) Remedy the nonconformity, and

(ii) Demonstrate that the engine conforms to the applicable standards or compliance levels, if established, by retesting the engine in accordance with these regulations.

(2) Submit a written report to the Administrator within five working days after completion of testing which contains a description of the remedy and test results for each engine in addition to other information that may be required by this regulation.

(j) Once a certificate for a failed configuration has been suspended pursuant to paragraph (b), (c) or (e) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating such certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented, and

(2) Demonstrate that the engine configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing engines selected from normal production runs of that engine configuration, at the plant(s) or associated storage facilities specified by the Administrator, in accordance with paragraph § 86.1010-83(g) and the conditions specified in the initial test order; *Except*, That if the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the applicable standards through testing in accordance with the applicable test procedures: *Provided*, That the Administrator has not revoked the certificate pursuant to paragraph (g) of this section.

(k) Once the certificate has been revoked for a configuration and the manufacturer desires to continue introduction into commerce of such configuration, the following actions shall be taken before the Administrator will consider reissuing such certificate:

(1) If the Administrator determines that the proposed change or changes in engine design may have an effect on emission performance deterioration, he will so notify the manufacturer within five (5) working days after receipt of the report in paragraph (h) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required.

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the engine configuration for which the certificate of conformity was revoked does in fact conform with these regulations by testing engines selected from normal production runs of that engine configuration in accordance with paragraph § 86.1010-83(g) and the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078-32 or § 86.079-33 if the Administrator had so notified the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards, the Administrator will reissue or amend the certificate, as the case may be, to include that configuration: *Provided*, That the manufacturer has satisfied the testing requirements specified pursuant to paragraph (j)(2) of this section. If the subsequent audit is failed, the revocation shall remain in effect. Any design change approvals under this subpart shall be limited to the configuration affected by the test order.

(l) At any time subsequent to an initial suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than fifteen (15) days or such other period as may be allowed by the Administrator after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), (d), (e) or (h) of this section or establishment of a compliance level in accordance with § 86.1011-83 which exceeds a standard, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph § 86.079-30(e), and prior to the commencement of a hearing under § 86.1014-83, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator will reinstate such certificate.

(n) To permit a manufacturer to avoid storing non-test engines when

conducting an audit of a configuration subsequent to suspension or revocation of the certificate of conformity for that configuration resulting from failure of an SEA or PCA audit, it may request that the Administrator conditionally reinstate the certificate for that configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all engines of that configuration produced from the time the certificate is conditionally reinstated if the configuration fails the subsequent audit at the level of the standard or upper limits, as applicable, and to remedy any nonconformity at no expense to the owner.

§ 86.1013-83 Nonconformance penalties.

(a) The nonconformance penalty shall be determined according to the following formula:

$$\left[\left(\frac{\frac{CL_{HC}}{HC_{STD}}+\frac{CL_{CO}}{CO_{STD}}+\frac{CL_{NOx}}{NOx_{STD}}}{3}\right)-1\right]\times 100\times MC\times F$$

Where:

CL_{HC}=compliance level for HC, according to paragraph § 86.1011-83(g).

CL_{CO}=compliance level for CO, according to paragraph § 86.1011-83(g).

CL_{NOx}=compliance level for NOx, according to paragraph § 86.1011-83(g).

HC_{STD}=heavy-duty engine emission standard for HC for the model year in which CL_{HC} is established.

CO_{STD}=heavy-duty engine emission standard for CO for the model year in which CL_{CO} is established.

NOx_{STD}=heavy-duty engine emission standard for NOx for the model year in which CL_{NOx} is established.

MC=marginal cost of compliance with emission standards as determined in paragraph (b) (3) of this section.

F=periodic penalty adjustment factor.

=1.0 for the first model year in which the HC_{STD}, CO_{STD} and/or NOx_{STD} are applicable.

$=1+[n-1)\times 0.25]$ for the n^{th} model year in which the HC_{STD}, CO_{STD} and/or NOx_{STD} are applicable.

(1) The compliance level for a pollutant shall be set equal to the standard for that pollutant in each of the following cases:

(i) No upper limit is established in this part for that pollutant.

(ii) An upper limit has been established in this part for that pollutant and the compliance level is less than the emission standard for that pollutant.

(iii) The configuration passed the Selective Enforcement Audit preceding the Production Compliance Audit with respect to the standard for that pollutant and did not fail the Production Compliance Audit with respect to the standard for that pollutant.

(2) If the compliance level determined pursuant to paragraph § 86.1011-83(g) exceeds the upper limit for the applicable pollutant, the compliance level shall be equal to the upper limit for purposes of performing the calculation in paragraph (a) of this section.

$$(3)\quad MC=\frac{I.C.}{\left[\left(\frac{\frac{HC_{INC}}{HC_{STD}}+\frac{CO_{INC}}{CO_{STD}}+\frac{NOx_{INC}}{NOx_{STD}}}{3}\right)-1\right]\times 100}$$

Where:

HC_{INC}=a hydrocarbon emission standard an increment above HC_{STD}.

CO_{INC}=a carbon monoxide emission standard an increment above CO_{STD}.

NOx_{INC}=an oxides of nitrogen emission standard an increment above NOx_{STD}.

I.C.=cost of bringing a heavy-duty gas or diesel engine which is in compliance with the incremental standards into compliance with HC_{STD}, CO_{STD} and NOx_{STD}.

$=C_v+C_{sv}+C_{user}$, where:

C_v=Variable costs of compliance with HC_{STD}, CO_{STD}, and NOx_{STD} (e.g., labor and materials for pollution control equipment and warranty obligations).

C_{sv}=semi-variable costs of compliance (e.g., amortized research and development and retooling costs).

C_{user}=user-borne costs of compliance (e.g., mileage penalty and increased maintenance requirements).

(b) The nonconformance penalty determined in paragraph (a) of this section shall be assessed against the following engines of the noncomplying configuration:

(1) Those engines produced at all plants since the beginning of the model year and distributed into commerce, until the time that the noncompliance level(s) is (are) established; and

(2) Those engines produced at all plants after the noncompliance level(s) is (are) established and distributed into commerce, until such time, if any, that the configuration is brought into compliance with applicable emission standards as demonstrated by passing an SEA pursuant to § 86.1010-83(j).

(c) The nonconformance penalty or penalties shall be paid within 15 days of the end of each calendar quarter (March 31, June 30, September 30, and December 31) for all nonconforming engines produced by a manufacturer and distributed into commerce for that quarter. Payment shall be made to the United States Treasury and shall be delivered to:

Director, Mobile Source Enforcement Division (EN-340), U.S. Environmental Protection Agency, 401 M. Street S.W., Washington, D.C. 20460.

§ 86.1014-83 Hearings on suspension, revocation, and voiding of certificates of conformity.

(a) *Applicability.* The procedures prescribed by this section shall apply whenever a manufacturer requests a hearing pursuant to § 86.079-30(e)(6)(i), § 86.079-30(e)(7), or 86.1012-83(1).

(b) *Definitions.* The following definitions shall be applicable to this section:

(1) "Hearing Clerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Manufacturer" refers to a manufacturer contesting a suspension or revocation order directed at the manufacturer.

(3) "Party" shall include the Agency and the manufacturer.

(4) "Presiding Officer" shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR Part 930 as amended).

(5) "Judicial Officer" shall mean an officer or employee of the Agency appointed as a Judicial Officer by the Administrator pursuant to this section who shall meet the qualifications and perform functions as follows:

(i) Officer—There may be designated for the purposes of this section one or more Judicial Officers. As work requires, there may be a Judicial Officer

designated to act for the purposes of a particular case.

(ii) Qualifications—A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. Such Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart.

(iii) Functions—The Administrator may consult with Judicial Officer or delegate all or part of his authority to act in a given case under this section to a Judicial Officer: *Provided,* That this delegation shall not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) *Request for public hearing.*

(1) If the manufacturer disagrees with the Administrator's decision to suspend, revoke or void a certificate or disputes the basis for an automatic suspension pursuant to § 86.1012-83(a), he may request a public hearing as described in this section. Requests for such a hearing shall be filed with the Administrator not later than 15 days after the Administrator's notification of his decision to suspend or revoke unless otherwise specified by the Administrator. Two copies of such request shall simultaneously be served upon the Director of the Mobile Source Enforcement Division and two copies filed with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided shall constitute a waiver of his right to such a hearing. Subsequent to the expiration of the period for requesting a hearing as a right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(2) The request for a public hearing shall contain:

(i) A statement as to which engine configuration is to be the subject of the hearing;

(ii) A concise statement of the issues to be raises by the manufacturer at the hearing: *Provided, however,* that in the case of the hearing requested under § 86.1012-83(1), the hearing shall be restricted to the following issues:

(A) Whether test have been properly conducted, specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning; and

(B) Whether sampling plans have been properly applied, specifically, whether sampling procedures specified in Appendix X, XI, or XII, as applicable, were followed and whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 86.1012-83(e) or cause the compliance level to be different at the other plants.

(iii) A statement specifying reasons the manufacturer believes he will prevail on the merits of each of the issues so raised; and

(iv) A summary of the evidence which supports the manufacturer's position on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(d) *Summary decision.*

(1) In the case of a hearing requested under § 86.1012-83(1), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in § 86.1014-83(c)(2)(ii), the Administrator will enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity, if such decision has been made pursuant to § 86.1012-83(g) at any time prior to the decision to deny the request for a hearing.

(2) In the case of a hearing requested under § 86.079—30 (e)(6)(i), to challenge a proposed suspension of a certificate of conformity for reasons specified in § 86.079-30(e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 86.1003-83 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator will enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraphs (d)(1) or (d)(2) of this section shall have the force and effect of a final decision of the Administrator, as issued to paragraph (w)(4) of this section.

(4) If the Administrator determines that a geniune and substantial question of fact does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, he shall grant the request for a hearing and publish a notice of public hearing in accordance with paragraph (h) of this secion.

(e) *Filing and service.*

(1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this secion. If filing is to be accomplished by mailing, the doucments shall be sent to the address set forth in the notice of public hearing as described in paragraph (h) of this section.

(2) To the maximum extent possible, testimony shall be presented in written form. Copies of written testimony shall be served upon all parites as soon as practicable prior to the start of the hearing. A certificate of service shall be provided on or accompanying each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Mobile Source Enforcement Division shall be sent by registered mail to:

Director Mobile Source Enforcement Division, U.S. Environmental Protection Agency, EN-340, 401 M Street, SW., Washington, D.C. 20460.

Service by registered mail is complete upon mailing.

(f) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing any such period allowed for the filing of any document or paper, except that when such period expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, three days shall be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Notice of public hearings.* Notice of a public hearing under this section shall be given by publication in the FEDERAL REGISTER and by such other means as the Administrator finds appropriate to provide notice to the public. To the extent possible hearings under this section shall be scheduled to commence within 14 days of receipt

of the application in paragraph (c) of this section.

(i) *Amicus curiae.* Persons not parties to the proceeding wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall have the duty to conduct a fair and impartial hearing in accordance with 5 U.S.C sections 554, 556 and 557 and to take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rule and with the Administrative Procedure Act necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and exclude irrelevant or repetitious material;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in the opinion of the Presiding Officer, oral testimony is not necessary for full and true disclosure of the facts;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues on the record of the hearing;

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section,

(k) *Conferences.* (1) At the discretion of the Presiding Officer, conferences may be held prior to or during any hearing. The Presiding Office shall direct the Hearing Clerk to notify all parties of the time and location of any such conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as are deemed necessary by the Presiding Officer;

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section; and

(D) Oral argument, if appropriate.

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the Presiding Officer and made part of the record.

(l) *Primary discovery (exchange of witness lists and documents).*

(1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2) The Presiding Officer, may, upon motion by a party or other person, and for good cause shown, by order

(i) restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and

(ii) prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of his expected testimony, to prepare for the presentation of his case.

(m) *Other discovery.* (1) Except as so provided by paragraph (1) of this section, further discovery, under this paragraph, shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That such information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the person or party from whom the information was sought.

(n) *Protective orders, in camera proceedings.* (1) Upon motion by a part or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof, (other than emission data) would result in methods or processes entitled to protection as trade secrets of such person being divulged, the Presiding Officer may enter a protective order with respect to such material. Any protective order shall contain such terms governing the treatment of the information as may be appropriate under the circumstances to prevent disclosure outside the hearing: *Provided,* That the order shall state that the material shall be filed separately from other evidence and exhibits in the hearing. Disclosure shall be limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the government, disclosure may be limited to counsel for parties who shall not disclose such information to the parties themselves. Except in the case of the govenment, disclosure to a party or his counsel shall be conditioned on execution of a sworn

statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (No such provision is necessary where government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or persons seeking a protective order may be permitted to make all or part of the required showing in camera. A record shall be made of such in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of such showing shall be sealed and preserved and made available to the agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issues pursuant to paragraph (n)(1) of this section, desiring for the presentation of his case to make use of any in camera documents or testimony shall make application to the Presiding Officer by motion setting forth the justification therefor. The Presiding Officer, in granting any such motion, shall enter an order protecting the rights of the affected persons and parties and preventing unnecessary disclosure of such information, including the presentation of such information and oral testimony and cross-examination concerning it in executive session, as in his discretion is necessary and practicable.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel considers it necessary to include specific details in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "confidential," which shall become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, shall be in writing and shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be filed with the Hearing Clerk and served upon all parties.

(2) Within such time as may be fixed by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, serve and file reply papers, within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Administrator or the judicial officer, as appropriate, shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer, the Administrator or the judicial officer, as appropriate, deems it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under paragraph (n) of this section shall be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The Presiding Officer shall allow the parties to examine and cross-examine a witness to the extent that such examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) *Record.* (1) Hearings shall be stenographically reported and transcribed and the original transcripts shall be part of the record and the sole official transcript. Copies of the record shall be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any person desiring a copy of the record of the hearing or any part thereof, except as provided in paragraph (n) of this section, shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

(r) *Proposed findings, conclusions.* (1) Within 4 days of the close of the reception of evidence, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and proposed order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(2) The record shall show the Presiding Officer's ruling on the proposed findings and conclusions except when his order disposing of the proceeding otherwise informs the parties of the action taken by him thereon.

(s) *Decision of the Presiding Officer.* (1) Unless extended by the Administrator, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 14 days (or within 7 days in the case of a hearing requested under § 86.1012(i)) after the period for filing proposed findings as provided for in paragraph (r) of this section has expired.

(2) The Presiding Officer's decision shall become the decision of the Administrator.

(i) When no notice of intention as described in paragraphs (t) and (u) of this section is filed, 10 days after issuance thereof, unless in the interim the Administrator shall have taken action to review or stay the effective date of the decision; or

(ii) When a notice of intention to appeal is filed but the appeal is not perfected as required by paragraph (t) or (u) of this section, 5 days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the Administrator shall have taken action to review or stay the effective date of the decision.

(3) The Presiding Officer's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact or law presented on the record and an appropriate rule or order. Such decision shall be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his decision.

(t) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Administrator: *Provided,* That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 20 days of such decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to such appeal. The brief shall be filed within 15 days of the date of the filing of the appellant's brief.

(3) Any brief filed pursuant to this paragraph shall contain in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A specification of the issues intended to be urged: Provided, however, That in the case of a hearing requested under § 86.1012-83(1), the brief shall be restricted to the issues specified in paragraph (c)(2)(ii) of this section;

(iii) The argument presents clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(iv) A proposed order for the Administrator's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages shall be filed without leave of the Administrator.

(5) Oral argument will be allowed only at the discretion of the Administrator.

(u) *Summary appeal.* (1) In the case of a hearing requested under § 86.1012-83(1), any appeal taken from the decision of the Presiding Officer shall be conducted under this paragraph.

(2) Any party to the proceeding may appeal the Presiding Officer's decision to the Administrator by filing a notice of appeal within 10 days.

(3) The notice of appeal shall be in the form of a brief, and shall conform to the requirements of paragraph (t)(3) of this section.

(4) Within 10 days after a notice of appeal from the decision of the Presiding Officer is filed under this paragraph, any party may file a brief with respect to such appeal.

(5) No brief in excess of 15 pages shall be filed without leave of the Administrator.

(v) *Review of the Presiding Officer's decision in the absence of appeal.* (1) If, after the expiration of the period for taking appeal as provided for by paragraph (t) or (u) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Administrator.

(2) The Administrator, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraphs (t) or (u) of this section, may, on his own motion, within the time limits specified in paragraph (s)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Administrator to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

(w) *Decision of appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which he could have exercised if he had presided at the hearing.

(2) In rendering his decision, the Administrator shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in his decision a statement of the reasons or basis for his action.

(3) In those cases where the Administrator believes that he should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Administrator, in his discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completes disposition of a case shall be a final decision of the Administrator.

(x) *Reconsideration.* Within twenty (20) days after issuance of the Administrator's decision, any party may file with the Administrator a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Administrator. *Provided,* however, that in the case of a hearing requested under § 86.1012-83(1) such new questions shall be limited to the issues specified in paragraph (c)(2)(ii) of this section.

Any party desiring to oppose such a petition shall file an answer thereto within ten (10) days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Administrator.

(y) *Accelerated decision, dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he may require, or dismiss any party with prejudice, for any of the following reasons:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) The lack of any genuine issue of material fact, causing a party to be entitled to judgment as a matter of law; or

(iii) Such other and further reasons as are just, including specifically failure to obey a procedural order of the Presiding Officer.

(2) If under this paragraph an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision shall be treated for the purposes of these procedures as the decision of the Presiding Officer as provided in paragraph (s) of this section.

(3) If under this paragraph, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(z) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraphs (t) and (u) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Administrator on his own motion as provided for by paragraph (v) of this section, the Administrator does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (t) and (u) of this section, or if, in the absence of such appeal the Administrator moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing will be deemed to have ended upon the rendering of a final decision by the Administrator.

(aa) *Judicial review.* (1) The Administrator hereby designates the General Counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. Such officer shall be re-

sponsible for filing in the court the record on which the order of the Administrator is based.

(2) Before forwarding the record to the court, the Agency shall advise the petitioner of costs of preparing it and as soon as payment to cover fees is made, shall forward the record to the court.

APPENDIX X

SAMPLING PLANS FOR INITIAL SELECTIVE ENFORCEMENT AUDITING OF HEAVY-DUTY ENGINES

Table 1

Sampling Plan Code Letter

Annual Sales	Code Letter
50–99	A
100–199	B
200–399	C
400 or greater	D

Table 2

Sample Plan for Code Letter "A"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	3
7	0	3
8	0	4
9	0	4
10	0	4
11	1	4
12	1	4
13	1	5
14	1	5
15	1	5
16	2	5
17	2	5
18	2	5
19	2	6
20	2	6
21	3	6
22	3	6
23	3	6
24	3	6
25	4	6
26	4	7
27	4	7
28	4	7
29	4	7
30	6	7

[1] Test sample passing not permitted at this stage.
[2] Test sample passing not permitted at this stage.

Table 3

Sample Plan for Code Letter "B"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	3
7	0	4
8	0	4
9	0	4
10	0	4
11	0	4
12	1	5
13	1	5
14	1	5
15	1	5
16	1	5
17	2	6
18	2	6
19	2	6
20	2	6
21	3	6
22	3	7
23	3	7
24	3	7
25	3	7
26	4	7
27	4	8
28	4	8
29	4	8
30	4	8
31	5	8
32	5	8
33	5	9
34	5	9
35	5	9
36	6	9
37	6	9
38	6	9
39	6	9
40	8	9

[1] Test sample passing not permitted at this stage.
[2] Test sample passing not permitted at this stage.

Table 4

Sample Plan for Code Letter "C"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	4
7	0	4
8	0	4
9	0	4
10	0	4
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	1	6
17	2	6
18	2	6
19	2	6
20	2	6
21	3	7
22	3	7
23	3	7
24	3	7
25	3	7
26	4	8
27	4	8
28	4	8
29	4	8
30	4	8
31	5	8
32	5	9
33	5	9
34	5	9
35	5	9
36	6	9
37	6	10
38	6	10
39	6	10
40	6	10
41	7	10
42	7	11
43	7	11
44	7	11
45	8	11
46	8	11
47	8	11
48	8	11
49	8	11
50	10	11

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

Table 5

Sample Plan for Code Letter "D"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	4
7	0	4
8	0	4
9	0	4
10	0	4
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	1	6
17	2	6
18	2	6
19	2	6
20	2	6
21	2	7
22	3	7
23	3	7
24	3	7
25	3	7
26	3	8
27	4	8
28	4	8
29	4	8
30	4	8
31	4	9
32	5	9
33	5	9
34	5	9
35	5	9
36	6	10
37	6	10
38	6	10
39	6	10
40	6	11
41	7	11
42	7	11
43	7	11
44	7	11
45	7	12
46	8	12
47	8	12
48	8	12
49	8	12
50	8	13
51	9	13
52	9	13
53	9	13
54	9	13
55	9	13
56	10	13
57	10	13
58	10	13
59	10	13
60	12	13

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

APPENDIX XI

SAMPLING PLANS FOR FOLLOW-UP SELECTIVE ENFORCEMENT AUDITING OF HEAVY-DUTY ENGINES

Table 1

Sampling Plan Code Letter

Population Size	Code Letter
50-99	A
100-199	B
200-299	C
300-499	D
500-699	E
700 or greater	F

Table 2

Sample Plan for Code Letter "A"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	4
7	(1)	4
8	(1)	4
9	(1)	4
10	(1)	4
11	0	4
12	0	4
13	0	5
14	0	5
15	0	5
16	1	5
17	1	5
18	1	5
19	1	5
20	1	5
21	2	6
22	2	6
23	2	6
24	2	6
25	2	6
26	2	6
27	3	6
28	3	6
29	3	6
30	5	6

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

Table 3

Sample Plan for Code Letter "B"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	4
5	(1)	4
6	(1)	4
7	(1)	4
8	(1)	4
9	(1)	4
10	(1)	5
11	(1)	5
12	0	5
13	0	5
14	0	5
15	0	5
16	0	5
17	1	6
18	1	6
19	1	6
20	1	6
21	1	6
22	1	6
23	1	6
24	1	6
25	1	6
26	1	6
27	1	6
28	1	6
29	1	6
30	1	6
31	1	6
32	1	6
33	1	6
34	1	6
35	1	6
36	1	6
37	1	6
38	1	6
39	1	6
40	1	6
41	1	6
42	1	6
43	1	6
44	1	6
45	1	6
46	1	6
47	1	6
48	1	6
49	1	6
50	1	6
51	1	6
52	1	6
53	1	6
54	1	6
55	1	6
56	1	6
57	1	6
58	1	6
59	1	6
60	1	6

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

Table 4

Sample Plan for Code Letter "C"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	(1)	4
5	(1)	4
6	(1)	4
7	(1)	4
8	(1)	4
9	(1)	4
10	(1)	5
11	(1)	5
12	0	5
13	0	5
14	0	5
15	0	5
16	0	5
17	0	6
18	1	6
19	1	6
20	1	6
21	1	6
22	1	7
23	1	7
24	2	7
25	2	7
26	2	7
27	2	7
28	2	7
29	3	8
30	3	8
31	3	8
32	3	8
33	3	8
34	3	8
35	4	9
36	4	9
37	4	9
38	4	9
39	4	9
40	4	9
41	5	9
42	5	9
43	5	9
44	5	9
45	5	9
46	6	9
47	6	9
48	6	9
49	6	9
50	8	9

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

Table 5

Sample Plan for Code Letter "D"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	(1)	4
5	(1)	4
6	(1)	4
7	(1)	4
8	(1)	4
9	(1)	5
10	(1)	5
11	(1)	5
12	(1)	5
13	0	5
14	0	5
15	0	5
16	0	6
17	0	6
18	1	6
19	1	6
20	1	6
21	1	6
22	1	7
23	1	7
24	2	7
25	2	7
26	2	7
27	2	7
28	2	8
29	2	8
30	3	8
31	3	8
32	3	8
33	3	8
34	3	9
35	3	9
36	4	9
37	4	9
38	4	9
39	4	9
40	4	9
41	4	10
42	5	10
43	5	10
44	5	10
45	5	10
46	5	10
47	5	11
48	6	11
49	6	11
50	6	11
51	6	11
52	6	11
53	7	11
54	7	11
55	7	11
56	7	11
57	7	11
58	7	11
59	8	11
60	10	11

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

Table 6

Sample Plan for Code Letter "E"

Sample Inspection Criteria

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	(1)	4
5	(1)	4
6	(1)	4
7	(1)	4
8	(1)	4
9	(1)	4
10	(1)	4
11	(1)	4
12	(1)	4
13	0	5

Stage	Pass No.	Fail No.
14	0	5
15	0	6
16	0	6
17	0	6
18	0	6
19	1	6
20	1	6
21	1	7
22	1	7
23	1	7
24	2	7
25	2	7
26	2	7
27	2	7
28	2	8
29	2	8
30	3	8
31	3	8
32	3	8
33	3	8
34	3	9
35	3	9
36	4	9
37	4	9
38	4	9
39	4	9
40	4	10
41	4	10
42	5	10
43	5	10
44	5	10
45	5	10
46	5	11
47	5	11
48	6	11
49	6	11
50	6	11
51	6	11
52	6	12
53	6	12
54	7	12
55	7	12
56	7	12
57	7	12
58	7	12
59	7	12
60	8	12
61	8	12
62	8	12
63	8	12
64	8	12
65	8	12
66	9	12
67	9	12
68	9	12
69	9	12
70	11	12

[1]Test sample passing not permitted at this stage.
[2]Test sample failure not permitted at this stage.

Table 7

Sample Plan for Code Letter "F"

Sampele Inspection Criteria

Stage	Pass No.	Fail No.
1	([1])	([2])
2	([1])	([2])
3	([1])	([2])
4	([1])	4
5	([1])	4
6	([1])	4
7	([1])	4
8	([1])	4
9	([1])	5
10	([1])	5
11	([1])	5
12	([1])	5
13	0	5
14	0	5
15	0	6
16	0	6
17	0	6
18	0	6
19	1	6
20	1	6
21	1	7
22	1	7
23	1	7
24	1	7
25	2	7
26	2	7
27	2	8
28	2	8
29	2	8
30	2	8
31	3	8
32	3	8
33	3	9
34	3	9
35	3	9
36	3	9
37	4	9
38	4	9
39	4	10
40	4	10
41	4	10
42	4	10
43	5	10
44	5	10
45	5	11
46	5	11
47	5	11
48	5	11
49	6	11
50	6	11
51	6	12
52	6	12
53	6	12
54	6	12
55	7	12
56	7	12
57	7	13
58	7	13
59	7	13
60	7	13
61	8	13
62	8	13
63	8	14
64	8	14
65	8	14
66	8	14
67	9	14
68	9	14
69	9	14
70	9	14
71	9	14
72	9	14
73	10	14
74	10	14
75	10	14
76	10	14
77	10	14
78	10	14
79	11	14
80	13	14

[1]Test sample passing not permitted at this stage.
[2]Test sample failure not permitted at this stage.

APPENDIX XII

SAMPLING PLANS FOR PRODUCTION COMPLIANCE AUDITING OF HEAVY-DUTY ENGINES

Table 1

Sampling Plan Code Letter

Annual Sales	Code Letter
50-99	A
100-399	B
400-599	C
600 or greater	D

Table 2

Test Sample Passing and Failure Criteria; Maximum Size

Code Letter	Fail No. With Respect to Upper Limits*	Maximum Test Sample Size
A	4	17
B	5	21
C	6	26
D	6	27

*Fail Number with respect to Standard for those pollutants for which no upper limits has been established.

24. A new Subpart N is proposed to be added to Part 86 and reads as follows:

Subpart N—Emission Regulations for New Gasoline-Fueled and Diesel Heavy-Duty Engines; Gaseous Exhaust Test Procedures

Sec.
86.1301-83 Scope; applicability.
86.1302-83 Definitions.
86.1303-83 Abbreviations.
86.1304-83 Section numbering; construction.
86.1305-83 Introduction; structure of subpart.
86.1306-83 Equipment required and specifications; overview.
86.1307-83 [Reserved]
86.1308-83 Dynamometer and engine equipment specifications.
86.1309-83 Exhaust gas sampling system.
86.1310-83 [Reserved]
86.1311-83 Exhaust gas analytical system.
86.1312-83 [Reserved]
86.1313-83 Fuel specifications.
86.1314-83 Analytical gases.
86.1315-83 EPA heavy-duty transient engine cycles.
86.1316-83 Calibrations; frequency and overview.
86.1317-83 [Reserved]
86.1318-83 Engine dynamometer calibrations.
86.1319-83 CVS calibration.
86.1320-83 [Reserved]
86.1321-83 Hydrocarbon analyzer calibration.
86.1322-83 Carbon monoxide analyzer calibration.
86.1323-83 Oxides of nitrogen analyzer calibration.
86.1324-83 Carbon dioxide analyzer calibration.
86.1325-83 [Reserved]
86.1326-83 Calibration of other equipment.
86.1327-83 Engine dynamometer test procedures; overview.
86.1328-83 [Reserved]
86.1329-83 [Reserved]
86.1330-83 Test sequence; general requirements.
86.1331-83 [Reserved]
86.1332-83 Pre-test procedures.
86.1333-83 [Reserved]
86.1334-83 [Reserved]
86.1335-83 [Reserved]
86.1336-83 Engine starting and restarting.
86.1337-83 Engine dynamometer test run.
86.1338-83 [Reserved]
86.1339-83 [Reserved]
86.1340-83 Exhaust sample analysis.
86.1341-83 [Reserved]
86.1342-83 Information required.
86.1343-83 [Reserved]
86.1344-83 Calculations; exhaust emissions.

Subpart N—Emission Regulations for New Gasoline-Fueled and Diesel Heavy-Duty Engines; Gaseous Exhaust Test Procedures

§ 86.1301-83 Scope; applicability.

This subpart contains gaseous emission test procedures for gasoline-fueled and diesel heavy-duty engines. It applies to 1983 and later model years.

§ 86.1302-83 Definitions.

The definitions in § 86.083-2 apply to this subpart.

§ 86.1303-83 Abbreviations.

The abbreviations in § 86.083-3 apply to this subpart.

§ 86.1304-83 Section numbering; construction.

(a) The model year of initial applicability is indicated by the section number. The two digits following the hyphen designated the first model year for which a section is effective. A section remains effective until superseded.

EXAMPLE: Section § 86.1311-83 applies to the 1983 and subsequent model years until superseded. If § 86.1311-85 is promulgated it would take effect begining with the 1985 model year; § 86.1311-83 would apply to model years 1983 and 1984.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

(c) Unless indicated, all provisions in this subpart apply to both gasoline-fueled and diesel heavy-duty engines.

§ 86.1305-83 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform exhaust emission tests on gasoline-fueled and diesel heavy-duty engines. Subpart A sets forth the testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) Four topics are addressed in this subpart. Sections 86.1306 through 86.1315 set forth specifications and equipment requirements; §§ 86.1316 through 86.1326 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximately chronological order) in §§ 86.1327 through 86.1342; and calculation formulas are found in § 86.1344.

§ 86.1306-83 Equipment required and specifications; overview.

(a) This subpart contains procedures for exhaust emissions tests on diesel or gasoline-fueled heavy-duty engines. Equipment required and specifications are as follows:

(1) *Exhaust emission test.* All engines subject to this subpart are tested for exhaust emissions. Diesel and gasoline-fueled engines are tested indentically with the exception of hydrocarbon measurements; diesel engines require a heated hydrocarbon detector, § 86.1309. Necessary equipment and specifications appear in sections 86.1308 through 86.1311.

(2) *Fuel, analytical gas, and engine cycle specifications.* Fuel specifications for exhaust emission testing and for service accumulation for gasoline-fueled and diesel engines are specified in § 86.1313. Analytical gases are specified in § 86.1314. The EPA Heavy-Duty Transient Engine Cycles for use in exhaust testing are specified in § 86.1315 and Appendix I.

§ 86.1307-83 [Reserved]

§ 86.1308-83 Dynamometer and engine equipment specifications.

(a) Engine dynamometer.

(1) The engine dynamometer system must be capable of transiently controlling engine torque and rpm, simultaneously on a transient cycle. The transient torque and rpm schedules listed in § 86.1315 and Appendix I (f and g) must be followed within the accuracy requirements specified in § 86.1315. In addition, to these general requirements, the dynamometer shall meet the following accuracy specifications:

(i) Engine speed shall be accurate to within 2 percent of point at all speeds.

(ii) Engine torque at the flywheel shall be accurate to within 3 percent of point at all torque settings above 10 percent of full-scale. Below 10 percent of full-scale the accuracy shall be within 5 percent of point.

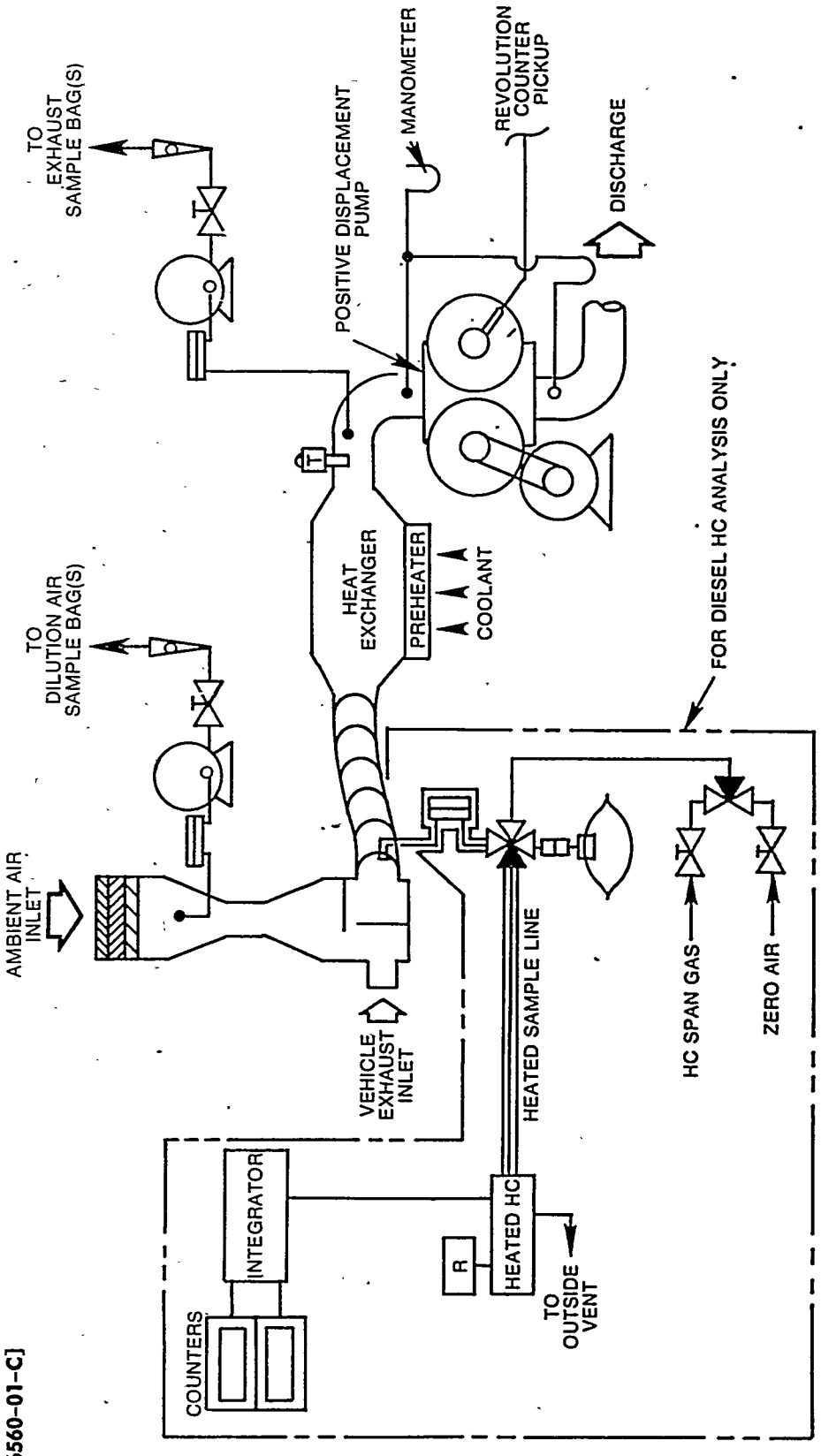
(2) *Dynamometer calibration weights.* A minimum of 6 calibration weights for each range used are required. The weights must be equally spaced and accurate to 0.5 percent of NBS weights. Laboratories located in foreign countries may certify calibration weights to local government bureau standards.

§ 86.1309-83 Exhaust gas sampling system.

(a)(1) *General.* The exhaust gas sampling system is designed to measure the true mass emissions of engine exhaust. In the CVS concept of measuring mass emissions, two conditions must be satisfied; the total volume of the mixture of exhaust and dilution air must be measured, and a continuously proportioned sample of volume must be collected for analysis. Mass emissions are determined from the sample concentration and total flow over the test period.

(2) *Positive displacement pump.* The positive displacement pump—constant volume sampler (PDP-CVS), Figure N83-1, satisfies the first condition by metering at a constant temperature and pressure through the pump. The total volume is measured by counting the revolutions made by the calibrated positive displacement pump. The proportional sample is achieved by sampling at a constant flow rate.

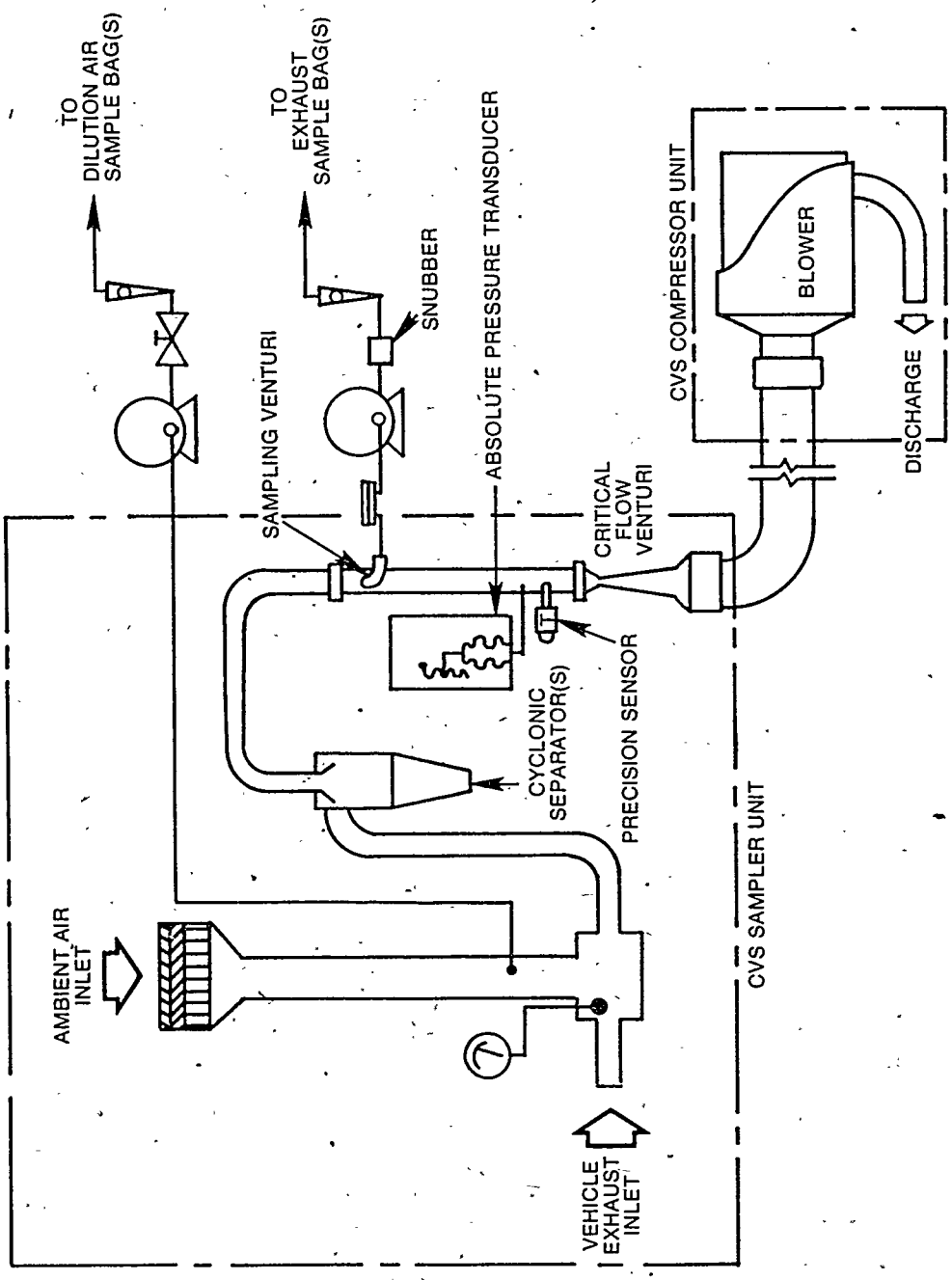
(3) *Critical flow venturi.* The operation of the critical flow venturi—constant volume sampler (CFV-CVS), Figure N83-2, is based upon the principles of fluid dynamics associated with critical flow. Proportional sampling throughout temperature excursions is maintained by use of a small CFV in the sample line. The variable mixture flow rate is maintained at sonic velocity, which is directly proportional to the square root of the gas temperature, and is computed continuously. Since the pressure and temperature are the same at both venturi inlets, the sample volume is proportional to the total volume.



[6560-01-C]

(SEE FIG. N83-3 FOR SYMBOL LEGEND)

FIGURE N83-1 — EXHAUST GAS SAMPLING SYSTEM PDP-CVS



(SEE FIG. N83-3 FOR SYMBOL LEGEND)

FIGURE N83-2 — EXHAUST GAS SAMPLING SYSTEM (CFV-CVS)

[6560-01-M]

(4) *Diesel sampling.* Diesel engines require a heated flame ionization detector (HFID) for hydrocarbon analysis. The sample must be taken as close as practical to the mixing point of the dilution air and exhaust sample. The HFID, by design, draws its sample at a constant flow rate. Unless compensation for varying flow is made the HFID must be used with a constant flow system to insure a representative sample.

(5) *Other systems.* Other sampling systems may be used if shown to yield equivalent results, and if approved in advance by the Administrator (e.g., a heat exchanger with the CFV-CVS; an electronic flow integrator without a heat exchanger, with the PDP-CVS; or, for diesel HC measurements, an electronic flow compensator with the CFV-CVS.

(b) *Component description, PDP-CVS.* The PDP-CVS, Figure D83-1, consists of a dilution air filter and mixing assembly, heat exchanger, positive displacement pump, sampling system, and associated valves, pressure and temperature sensors. The PDP-CVS shall conform to the following requirements:

(1) Static pressure variations at the tailpipe(s) of the engine shall remain within ±5 inches of water (1.2 kPa) of the static pressure variations measured during a dynamometer engine cycle with no connection to the tailpipe(s). (Sampling systems capable of maintaining the static pressure to within ±1 inch of water (0.25 kPa) will be used by the Administrator if a written request substantiates the need for this closer tolerance.)

(2) The gas mixture temperature, measured at a point immediately ahead of the positive displacement pump, shall be within ±10°F (5.6°C) of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ±10°F (5.6°C) during the entire test. The temperature measuring system shall have an accuracy and precision of ±2°F (1.1°C).

(3) The pressure gauges shall have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system.

(5) Sample collection bags for dilution air and exhaust samples shall be sufficient size so as not to impede sample flow.

(c) *Component description, CFV-CVS.* The CFV-CVS, Figure N83-2, consists of a dilution air filter and mixing assembly, cyclone particulate separator(s), sampling venturi, critical flow venturi, sampling system, and assorted valves, pressure and temperature sensors.

The CFV-CVS shall conform to the following requirements:

(1) Static pressure variations at the tailpipe(s) of the vehicle shall remain within ±5 inches of water (1.2 kPa) of the static pressure variations measured during a dynamometer engine cycle with no connection to the tailpipe(s). (Sampling systems capable of maintaining the static pressure to within ±1 inch of water (0.25 kPa) will be used by the Administrator if a written request substantiates the need for this closer tolerance.)

(2) The temperature measuring system shall have an accuracy and precision of ±2°F (1.1°C) and a response time of 0.100 seconds to 62.5 percent of a temperature change (as measured in hot silicone oil).

(3) The pressure measuring system shall have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to virtually eliminate water condensation in the system.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow.

§ 86.1310-83 [Reserved]

§ 86.1311-83 Exhaust gas analytical system.

(a) *Schematic drawings.* Figure N83-3 is a schematic drawing of the exhaust gas analytical system. The schematic of the hydrocarbon analysis train for diesel engines is shown as part of Figure N83-1. Since various configurations can produce accurate results, exact conformance with either drawing is not required. Additional components such as instruments, valves, solenoids, pumps and switches may be used to provide additional information and coordinate the functions of the component systems.

(b) *Major component description.* The analytical system, Figure N83-3, consists of a flame ionization detector (FID) for the determination of hydrocarbons, nondispersive infrared analyzers (NDIR) for the determination of carbon monoxide and carbon dioxide and a chemiluminescence analyzer (CL) for the determination of oxides of nitrogen. A heated flame ionization detector (HFID) is used for the continuous determination of hydrocarbons from diesel engines, Figure N83-1.

The exhaust gas analytical system shall conform to the following requirements:

(1) The CL requires that the nitrogen dioxide present in the sample be converted to nitric oxide before analysis. Other types of analyzers may be used if shown to yield equivalent results and if approved in advance by the Administrator.

[6560-01-C]

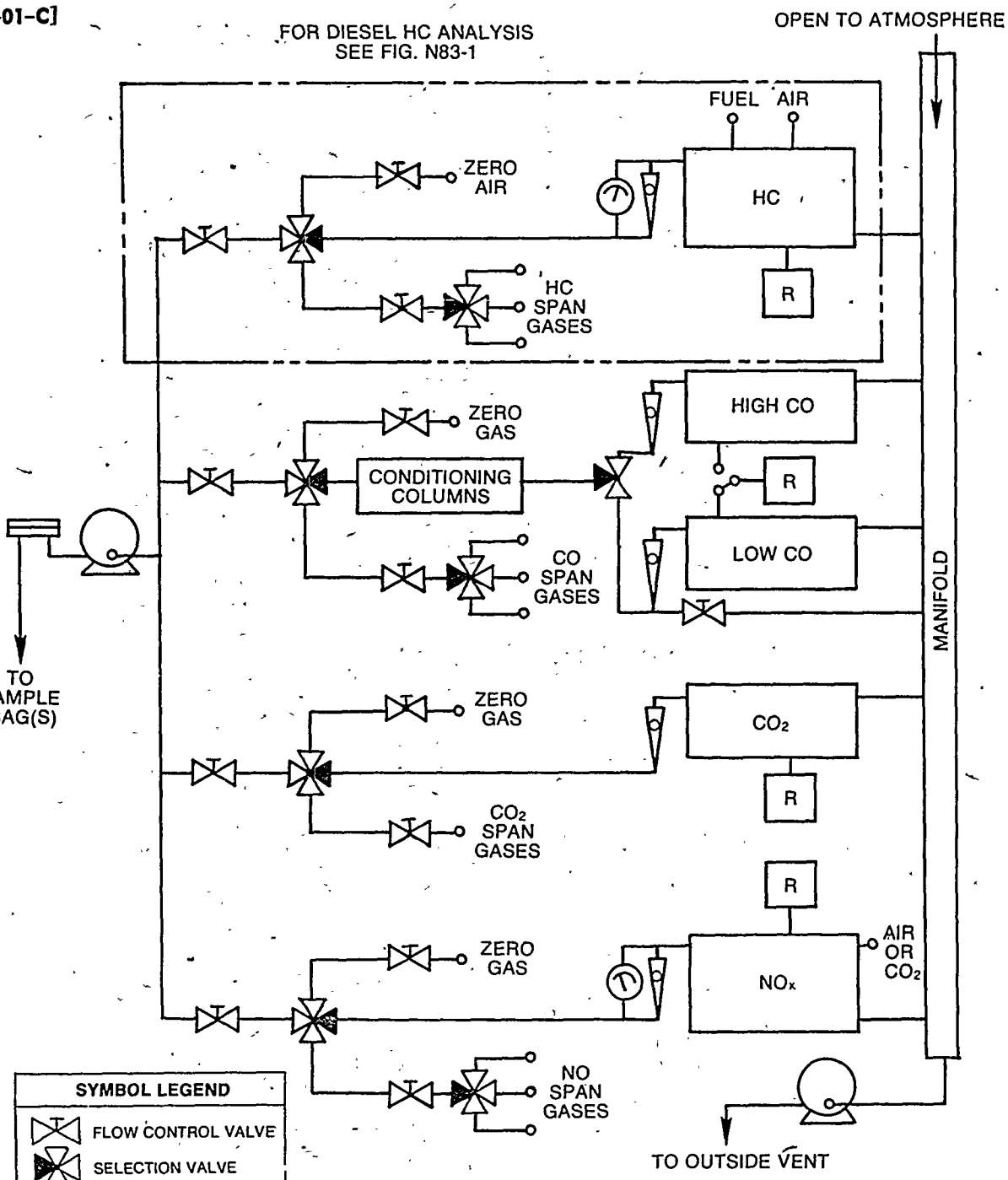


FIGURE N83-3 EXHAUST GAS ANALYTICAL SYSTEM

[6560-01-M]

(2) The carbon monoxide (NDIR) analyzer may require a sample conditioning column containing $CaSO_4$, or indicating silica gel to remove water vapor and containing ascarite to remove carbon dioxide from the CO analysis stream.

(i) If CO instruments which are essentially free of CO_2 and water vapor interference are used, the use of the conditioning column may be deleted, see § 86.1322 and § 86.1344.

(ii) A CO instrument will be considered to be essentially free of CO_2 and water vapor interference if its response to a mixture of 3 percent CO_2 in N_2 which has been bubbled through water at room temperature produces an equivalent CO response, as measured on the most sensitive CO range, which is less than 1 percent of full scale CO concentration on ranges above 300 ppm full scale or less than 3 ppm on ranges below 300 ppm full scale, see § 86.1322.

(3) For diesel engines a continuous sample shall be measured using a heated analyzer train as shown in Figure N83-1. The train shall include a heated continuous sampling line, a heated particulate filter, and a heated hydrocarbon instrument (HFID) complete with heated pump, filter and flow control system.

(i) The response time of this instrument shall be less than 1.5 seconds for 90 percent of full-scale response.

(ii) Sample transport time from sampling point to inlet of instrument shall be less than 4 seconds.

(iii) The sample line and filter shall be heated to a set point ±10° F (±5.6° C) between 300 and 390° F (149 and 199° C)

(c) *Other analyzers and equipment.* Other types of analyzers and equipment may be used if shown to yield equivalent results and if approved in advance by the Administrator.

§ 86.1312-83 [Reserved]

§ 86.1313-83 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust emission testing. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust testing, except that the lead and octane specifications do not apply.

Item	ASTM	Leaded	Unleaded
Octane, research, minimum	D2699	98	93
Pb. (organic), gm/U.S. gallon		[1]1.4	0.00-0.05
Distillation range:			
IBP, °F	D86	75-95	75-95
10 percent point, °F	D86	120-135	120-135
50 percent point, °F	D86	200-230	200-230
90 percent point, °F	D86	300-325	300-325
EP, °F (maximum)	D86	415	415
Sulphur, weight percent (max)	D1266	0.10	0.10
Phosphorus, gm/US. Gallon (max)		0.01	0.005
RVP, psi	D323	8.7-9.2	8.7-9.2
Hydrocarbon composition:			
Olefins, percent (max)	D1319	10	10
Aeromatics, percent (max)	D1319	35	35
Saturates	D1319	[2]	[2]

[1]Minimum.
[2]Remainder.

(2) Gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. For leaded gasoline the minimum lead content shall be 1.4 grams per U.S. gallon, except that where the Administrator determines that vehicles represented by a test vehicle will be operated using gasoline of different lead content than that prescribed in this paragraph, he may consent in writing to use of a gasoline with a different lead content. The octane rating of the gasoline used shall be not higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number. The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.083-21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, and dispersant.

(2) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of diesel fuel recommended by the engine manufacturer commercially designated as "Type 1-D" or "Type 2-D" grade diesel fuel shall be used.

Item	ASTM	Type 1-D	Type 2-D
Cetane	D613	48-54	42-50
Distillation range:			
IBP °F	D86	330-390	340-400
10 percent point, °F	D86	370-430	400-460
50 percent point, °F	D86	410-480	470-540
90 percent point, °F	D86	460-520	550-610
EP, °F	D86	500-560	580-660
Gravity, °API	D287	40-44	33-37
Total Sulfur, percent	D129 or D2622	0.05-0.20	0.2-0.5
Hydrocarbon composition:			
Aromatics, percent	D1319	[1]8	[1]27
Parafins, Naphthenes, Olefins	D1319	([2])	([2])
Flashpoint, °F (minimum)	D93	120	130
Viscosity, Centistokes	D445	1.6-2.0	2.0-3.2

[1]Minimum.
[2]Remainder.

(3) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1-D" or "Type 2-D" grade diesel fuel shall be used.

Item	ASTM	Type 1-D	Type 2-D
Cetane (minimum)	D613	42-56	30-58
Distillation range:			
90 percent point, °F	D86	440-530	540-630
Gravity °APM	D287	39-45	30-42
Total sulfur, percent (minimum)	D129 or D2622	[1]0.05	0.2
Flashpoint, °F (minimum)	D93	120	130
Viscosity, centistokes	D455	1.2-2.2	1.5-4.5

[1]Minimum.

(4) Other petroleum distillate fuels may be used for testing and service accumulation provided that are commercially available, and

(i) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(ii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.083-21(b)(3).

§ 86.1314-83 Analytical gases.

(a) Analyzer gases.

(1) Gases for the CO and CO_2 analyzers shall be single blends of CO and CO_2 respectively using nitrogen as the diluent.

(2) Gases for the hydrocarbon analyzer shall be single blends of propane using air as the diluent.

(3) Gases for the NOx analyzer shall be single blends of NO named as NOx with a maximum NO_2 concentration of 5 percent of the nominal value using nitrogen as the diluent.

(4) Fuel for the FID shall be a blend of 40±2 percent hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response. 98 to 100% hydrogen fuel may be used with advance approval of the Administrator.

(5) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(6)(a) "Zero-grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(b) Calibration gases shall be traceable to within 1 percent of NBS gas standards, or other gas standards which have been approved by the Administrator.

(c) Span gases shall be accurate to within 2 percent of true concentration, where true concentration refers to NBS gas standards, or other gas standards which have been approved by the Administrator.

(7) The use of proportioning and precision blending devices to obtain the required gas concentrations is allowable provided their use has been approved in advance by the Administrator.

§ 86.1315-83 EPA heavy-duty transient engine cycles.

(a) The heavy-duty transient engine cycles for gasoline-fueled and diesel engines are listed in Appendix I (f and g). These second-by-second listings are designed to represent transient torque and rpm maneuvers characteristic of heavy-duty vehicles. Both rpm and torque are normalized in these listings. To unnormalize rpm use the following equation:

$$\text{Actual RPM} = \frac{\%\text{RPM}(\text{Measured Rated RPM} - \text{Curb Idle RPM})}{100} + \text{Curb Idle RPM}$$

Torque is normalized to the maximum torque at the rpm listed with it. Therefore, to unnormalize the torque values in the cycle, the maximum torque curve for the engine in question must be used. The generation of the maximum torque curve is described in § 86.1332.

(b) *Example of the unnormalization procedure.* The following test point shall be unnormalized:

% RPM	% Torque
43	82

The test engine has these values:

Measured Rated RPM=3800 (Does not appear on given torque curve)
Curb Idle RPM=600

Maximum torque curve as illustrated in Figure N83-4

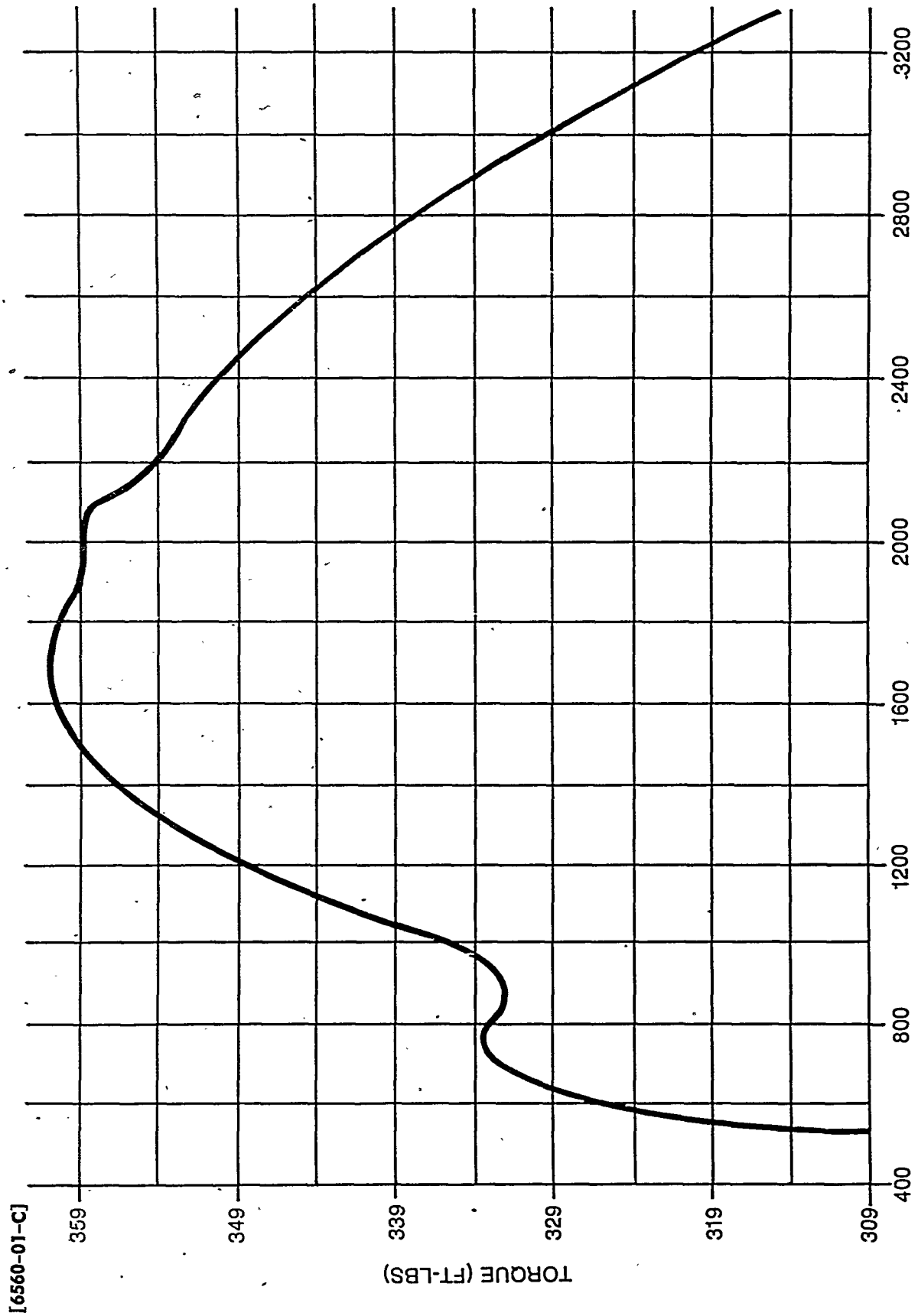


FIGURE N83-4 — SAMPLE MAXIMUM TORQUE CURVE FOR A GASOLINE-FUELED ENGINE.

[6560-01-M]

Calculate actual RPM:

$$\text{Actual RPM} = \frac{43(3800 - 600)}{100} + 600$$

$$\text{Actual RPM} = 1976$$

$$\text{Actual RPM} = \frac{\%\text{RPM}(\text{Rated RPM} - \text{Idle RPM})}{100} + \text{Idle RPM}$$

Determine actual torque:

Determine the maximum torque at 1976 rpm from Figure N83-4. Then multiply this value (358 ft-lb) by 0.82. This results in an actual torque of 294 ft-lbs.

(c) Engine speed and torque shall be recorded at least once every second during the cold start test and hot start test. The torque and rpm feedback signals may be electrically filtered.

(d) *Cycle validation.*

(1) To reduce errors between the feedback and reference (cycle trace) values the engine speed and torque feedback signals may be shifted a maximum of±5 seconds with respect to the reference speed and torque traces. If the feedback signals are shifted, both must be shifted the same amount.

(2) Calculate the brake horsepower for each pair of engine speed and torque values recorded. Also calculate the reference brake horsepower for each pair of engine speed and torque reference values. Calculations shall be to five significant digits.

(3) Linear regressions of feedback value on reference value shall be performed for speed, torque and brake horsepower. The method of least-square shall be used. The equation shall have the form:

$$y = mx + b$$

where:

y=The estimated feedback (actual) value of speed (in rpm), torque (in ft-lbs.), or brake horsepower.

m=Slope of the regression line.

x=The reference value (speed, torque, or brake horsepower).

b=The y intercept of the regression line.

(4) The standard error of estimate (SE) of y on x and the coefficient of determination (r^2) shall be calculated for each regression line.

(5) All speed points except the initial 24±1 second idle period of the cold and hot start cycles shall be included when performing the speed regression.

(6) All torque points except the following points shall be included when performing the torque regression:

(i) All torque points measured during the initial 24±1 second idle period of the cold and hot start cycle.

(ii) All torque points where the throttle is wide-open and negative torque error occurs.

(7) All points included in the regression on torque shall be used when performing the regression on brake horsepower.

(8) For a valid test the following criteria must be met for both cycles (cold start and hot start), individually:

(i) *Regression line tolerances.*

	Speed	Torque	Brake horsepower
Standard error of estimate (SE) of y on x.	100 rpm	10% of max. engine torque (in ft-lbs).	5% of maximum brake horsepower
Slope of the regression line, m	0.970–1.020	0.850–1.020	0.900–1.020
Coefficient of determination, r^2	0.9700 [1]	0.8800 [1]	0.9200(1)
y Intercept of the regression line, b	±50 rpm	±10.0 ft-lbs	±5.0 BHP

[1] Minimum.

(ii) The integrated brake horsepower-hour for each cycle (cold and hot start) shall be between −15% and +5% of the integrated brake horsepower-hour for the reference cycle or the test is void. All torque and speed data points including closed throttle and wide-open throttle must be used to calculate the integrated brake horsepower-hour. The free idle points do not have to be included in the calculation, however if included, the reference cycle and the engine data must be treated in a consistent manner. For the purposes of this calculation, negative torque values (i.e., motoring horsepower) shall be set equal to zero and included.

§ 86.1316-83 Calibrations; frequency and overview.

(a) Calibrations shall be performed as specified in §§ 86.1318 through 86.1326.

(b) At least monthly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Calibrate the hydrocarbon analyzer, carbon dioxide analyzer, carbon monoxide analyzer, and oxides of nitrogen analyzer.

(2) Calibrate the engine dynamometer flywheel torque and speed measurement transducers.

(3) Calibrate the engine flywheel torque and speed feedback signals.

(c) At least weekly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Check the oxides of nitrogen converter efficiency, and

(2) Perform a CVS system verification.

(d) The CVS positive displacement pump or critical flow venturi shall be calibrated following initial installation, major maintenance or as necessary when indicated by the CVS system verification (described in § 86.1319).

(e) Sample conditioning columns, if used in the CO analyzer train, should be checked at a frequency consistent with observed column life or when the indicator of the column packing begins to show deterioration.

§ 86.1317-83 [Reserved]

§ 86.1318-83 Engine dynamometer system calibrations.

(a) The engine flywheel torque and engine speed measurement transducers shall be calibrated at least once each month.

(b) The engine flywheel torque and engine speed feedback signal shall be within 3% and 2% of the engine flywheel torque and engine speed transducer values, respectively. The torque

and speed feedback signal shall be calibrated at least once each month.

(c) Other engine dynamometer system calibrations shall be performed as dictated by good engineering practice and manufacturer's recommendations.

§ 86.1319-83 CVS calibration.

(a) The CVS is calibrated using an accurate flowmeter and restrictor valve. Measurements of various parameters are made and related to flow through the unit. Procedures used by EPA for both PDP- and CFV-CVS's are outlined below. Other procedures yielding equivalent results may be used if approved in advance by the Administrator.

(b) After the calibration curve has been obtained, verification of the entire system can be performed by injecting a known mass of gas into the system and comparing the mass indicated by the system to the true mass injected. An indicated error does not necessarily mean that the calibration is wrong, since other factors can influence the accuracy of the system, e.g. analyzer calibration. A verification procedure is found in paragraph (c) of this section.

(c) PDP calibration.

(1) The following calibration procedure outlines the equipment, the test configuration, and the various parameters which must be measured to establish the flow rate of the CVS pump.

(i) All the parameters related to the pump are simultaneously measured with the parameters related to a flowmeter which is connected in series with the pump.

(ii) The calculated flow rate, ft^3/min., (at pump inlet absolute pressure and temperature) can then be plotted versus a correlation function which is the value of a specific combination of pump parameters.

(iii) The linear equation which relates the pumpflow and the correlation function is then determined.

(iv) In the event that a CVS has a multiple speed drive, a calibration for each range used must be performed.

(2) This calibration procedure is based on the measurement of the absolute values of the pump and flowmeter parameters that relate the flow rate at each point. Three conditions must be maintained to assure the accuracy and integrity of the calibration curve:

(i) The pump pressures should be measured at taps on the pump rather than at the external piping on the pump inlet and outlet. (Pressure taps that are mounted at the top center and bottom center of the pump drive headplate are exposed to the actual pump cavity pressure, and therefore reflect the absolute pressure differentials.)

(ii) The temperature stability must be maintained during calibration. (The laminar flowmeter is sensitive to inlet temperature oscillations which cause the data points to be scattered. Gradual changes (±2°F (1.1°C)) in temperature are acceptable as long as they occur over a period of several minutes.)

(iii) All connections between the flowmeter and the CVS pump must be absolutely void of any leakage.

(3) During an exhaust emission test the measurement of these same pump parameters enables the user to calculate the flow rate from the calibration equation.

(4) Connect a system as shown in Figure N83-5. Although particular types of equipment are shown, other configurations that yield equivalent results may be used if approved in advance by the Administrator. For the system indicated, the following data with given accuracy are required:

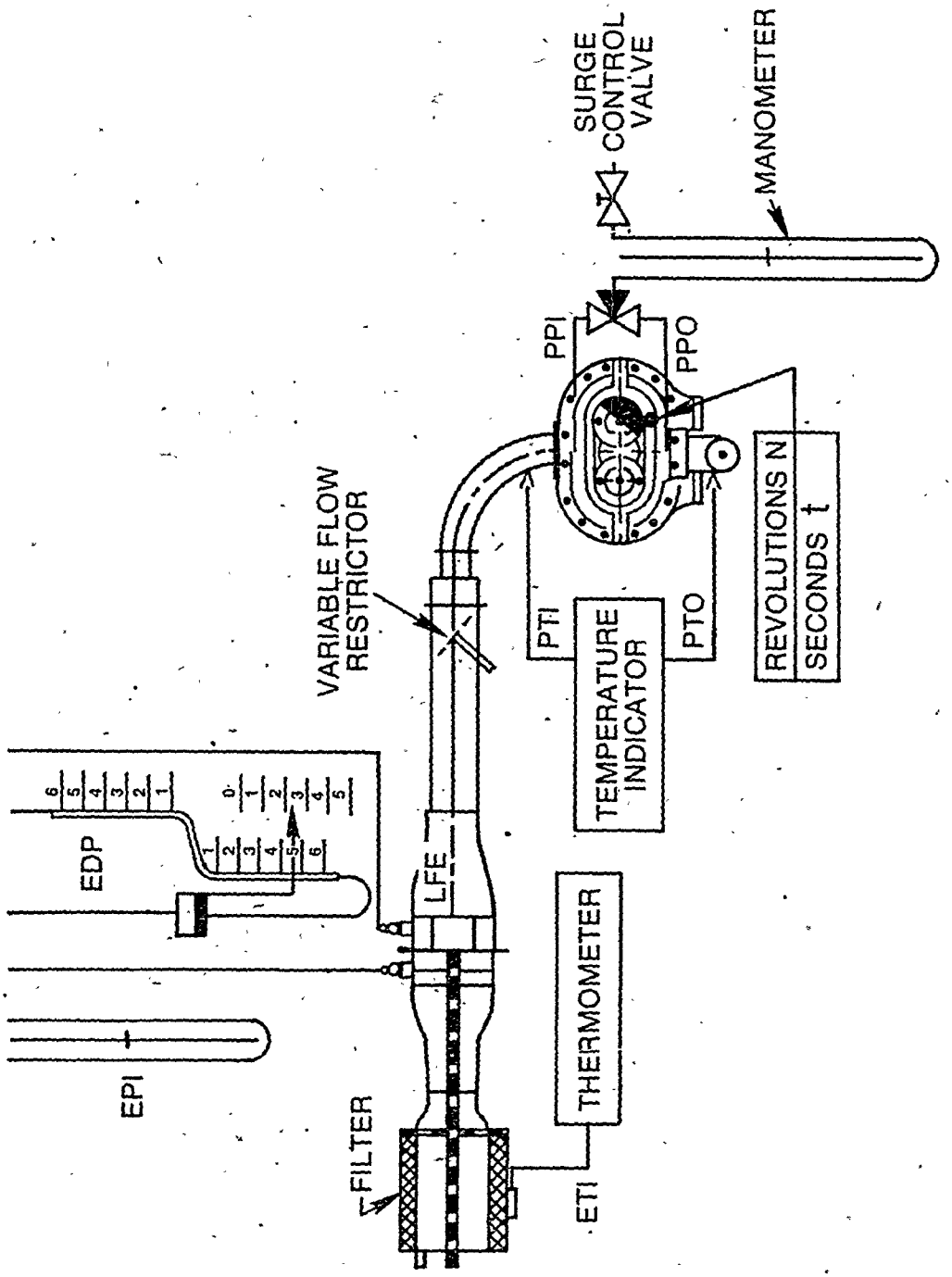


FIGURE N83-5 — PDP-CVS CALIBRATION CONFIGURATION

[6560-01-C]

[6560-01-M]

CALIBRATION DATA MEASUREMENTS

Parameter	Sym	Units	Tolerances
Barometric pressure (corrected)	P_B	in. Hg (kPa)	±.01 in. Hg (±.034 kPa)
Ambient temperature	T_A	°F (°C)	±.5° F (±.28° C)
Air temperature into LFE	ETI	°F (°C)	±.25 °F (±.14 °C)
Pressure depression upstream of LFE	EPI	in. H_2O (kPa)	±.05 in. H_2O (±.001 kPa)
Pressure drop across the LFE matrix	EDP	in. H_2O (kPa)	±.005 in. H_2O (±.001 kPa)
Air temperature at CVS pump inlet	PTI	°F (°C)	±.5° F (±.28° C)
Pressure depression at CVS pump inlet	PPI	in. Fluid (kPa)	±.05 in. Fluid (±.022 kPa)
Specific gravity of manometer fluid (1.75 oil).	Sp. G		
Pressure head at CVS pump outlet	PPO	in Fluid (kPa)	±.05 in. Fluid (±.022 kPa)
Air Temperature at CVS pump outlet (optional).	PTO	°F (°C)	±.5° F (±.28° C)Pump revolutions during test period
	N	Revs	±1 Rev.
Elapsed time for test period	t	s	±.05 s

(5) After the system has been connected as shown in Figure N83-4, set the variable restrictor in the wide open position and run the CVS pump for 20 minutes. Record the calibration data.

(6) Reset the retrictor valve to a more restricted condition in an increment of pump inlet depression (about 4" H_2O (1.1 kPa)) that will yield a minimum of six data points for the total calibration. Allow the system to stbilize for 3 minutes and repeat the data acquisition.

(7) *Data analysis:*

(i) The air flow rate, Qs, at each test point is calculated in standard cubic feet per minute from the flow-meter data using the manufacturer's prescribed method.

(ii) The air flow rate is then converted to pump flow, V_o, in cubic feet per revolution at absolute pump inlet temperature and pressure.

$$V_o = \frac{Qs}{n} \times \frac{T_p}{528} \times \frac{29.92}{P_p}$$

Where:

V_o=Pump flow, ft³/revolution (m³/revolution) at T_P, P_P.

Qs=Meter air flow rate in standard cubic feet per minute, standard conditions are 68°F, 29.92 in. Hg (20°C, 101.3 kPa).

n=Pump speed in revolutions per minute.

T_P=Pump inlet temperature R(K)=PTI+460 for SI units, T_P=PTI+273

P_P=Absolute pump inlet pressure, in. Hg (kPa)=P_B−PPI (Sp. Gr./13.57) for SI units, P_P=P_B−PPI

Where:

P_B=barometric pressure, in. Hg (kPa).

PPI=Pump inlet depression, in. fluid (kPa).

Sp. Gr.=Specific gravity of manometer fluid relative to water.

(iii) The correlation function at each test point is then calculated from the calibration data.

$$x_o = \frac{1}{n}\sqrt{\frac{p_p}{p_e}}$$

Where:

x_o=correlation function.

Δp_b=The pressure differential from pump inlet to pump outlet, in Hg (kPa). =P_e−P_P

P_e=Absolute pump outlet pressure, in. Hg (kPa)=P_B+PPO (Sp. Gr./13.57) for SI units, P_e=P_B+PPO

(b) *CVF calibration*

(1) Calibration of the CFV is based upon the flow equation for a critical venturi. Gas flow is a function of inlet pressure and temperature:

$$Q_s = \frac{K_v P}{\sqrt{T}}$$

Where:

Q_s=flow,

K_v=calibration coefficient,

P=absolute pressure,

T=absolute temperature.

The calibration procedure described below establishes the value of the calibration coefficient at measured values of pressure, temperature and air flow.

(2) The manufacturer's recommended procedure shall be followed for calibrating electronic portions or the CFV.

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Sym	Units	Tolerances
Barometric pressure (corrected)	P_B	in. Hg (kPa)	±.01 in. Hg (±.034 kPa)
Air temperature, flowmeter	ETI	°F (°C)	±.25°F (±.14°C)
Pressure depression upstream of LFE	EPI	in. H_2O (kPa)	±.05 in. H_2O (±.012 kPa)
Pressure drop across LFE matrix	EDP	in. H_2O (kPa)	±.005 in. H_2O (±.001 kPa)
Air flow	Q_s	ft³/min. (m³/min.)	±.5%
CFV inlet depression	PPI	in. fluid (kPa)	±.05 in. fluid (±.022 kPa)
Temperature at venturi inlet	T_v	°F (°C)	±.5°F (±.28°C)
*Specific gravity of manometer fluid (1.75 oil).	*Sp. Gr.		

(4) Set up equipment as shown in Figure N83-6 and check for leaks. Any leaks between the flow measuring devices and the critical flow venturi will seriouly affect the accuracy of the calibration.

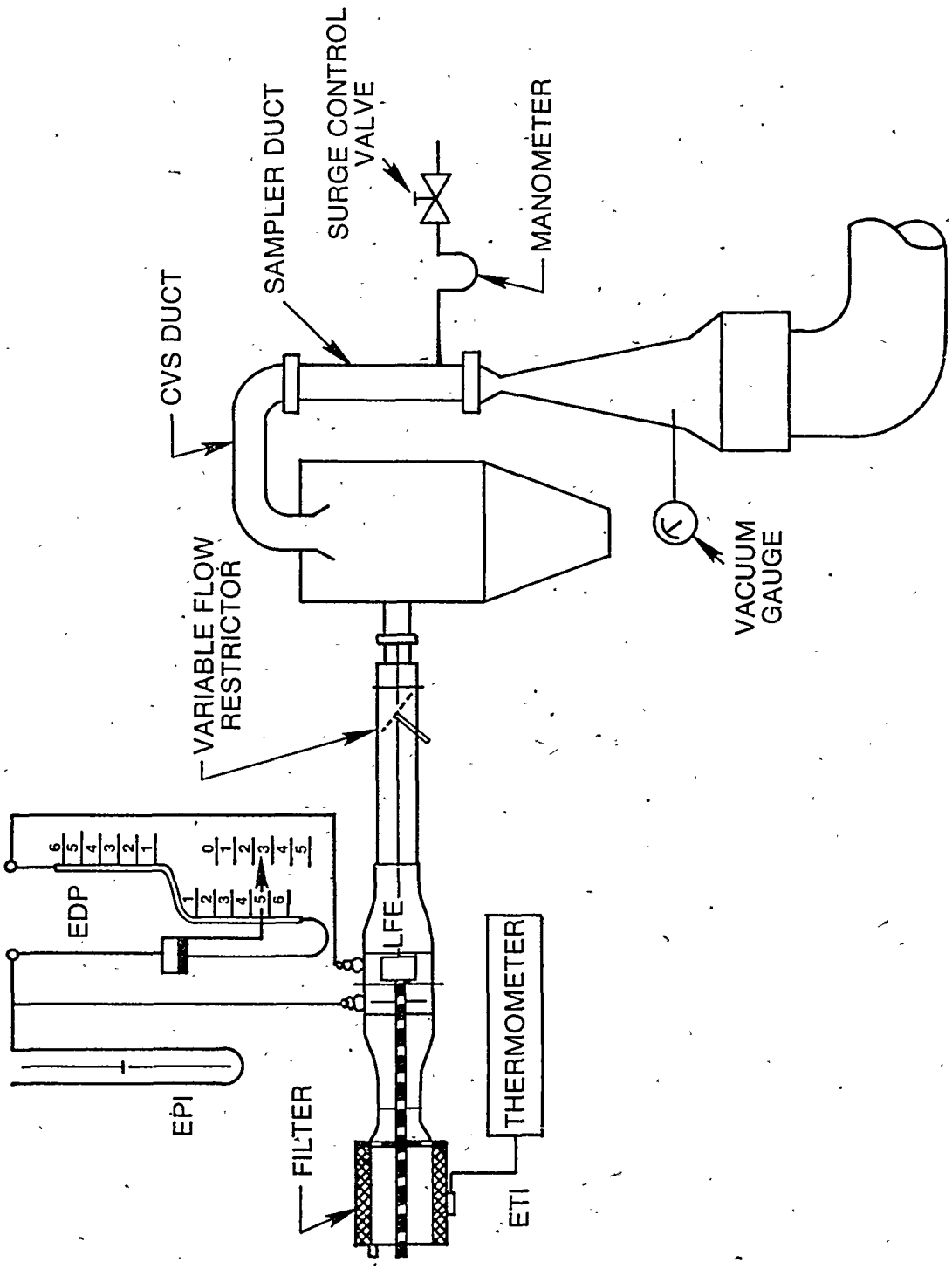


FIGURE N83-6 — CFV-CVS CALIBRATION CONFIGURATION

[6560-01-C]

[6560-01-M]

(5) Set the variable flow restrictor to the open position, start the blower, and allow the system to stabilize. Record data from all instruments.

(6) Vary the flow restrictor and make at least 8 readings across the critical flow range of the venturi.

(7) *Data analysis.* The data recorded during the calibration are to be used in the following calculations:

(i) The air flow rate, Q_s, at each test point is calculated in standard cubic feet per minute from the flow meter data using the manufacturer's prescribed method.

(ii) Calculate values of the calibration coefficient for each test point:

$$K_v = \frac{Q_s\sqrt{T_v}}{P_v}$$

Where:

Q_s=Flow rate in standard cubic feet per minute, standard conditions are 68° F, 29.92 in. Hg (20° C, 101.3 kPa).

T_v=Temperature at venturi inlet, R(K).

P_v=Pressure at venturi inlet, mm Hg (kPa).

$_B$–PPI (Sp. Gr./13.57).

for SI units: $P_v = {}_B - PPI$

Where:

PPI=Venturi inlet pressure depression, in. fluid (kPa).

Sp. Gr.=Specific gravity of manometer fluid, relative to water.

(iii) Plot K_v as a function of venturi inlet pressure. For sonic flow, K_v will have a reatively constant value. As pressure decreases (vacuum increases), the venturi becomes unchoked and K_v decreases. See Figure N83-7.

(iv) For a minimum of 8 points in the critical region calculate an average K_v and the standard deviation.

(v) If the standard deviation exceeds 0.3% of the average K_v take corrective action.

(c) *CVS system verification.*

The following "gravimetric" technique can be used to verify that the CVS and analytical instruments can accurately measure a mass of gas that has been injected into the system. (Verification can also be accomplished by constant flow metering using critical flow orifice devices.)

(1) Obtain a small cylinder that has been charged with pure propane or carbon monoxide gas (caution—carbon monoxide is poisonous).

[6560-01-C]

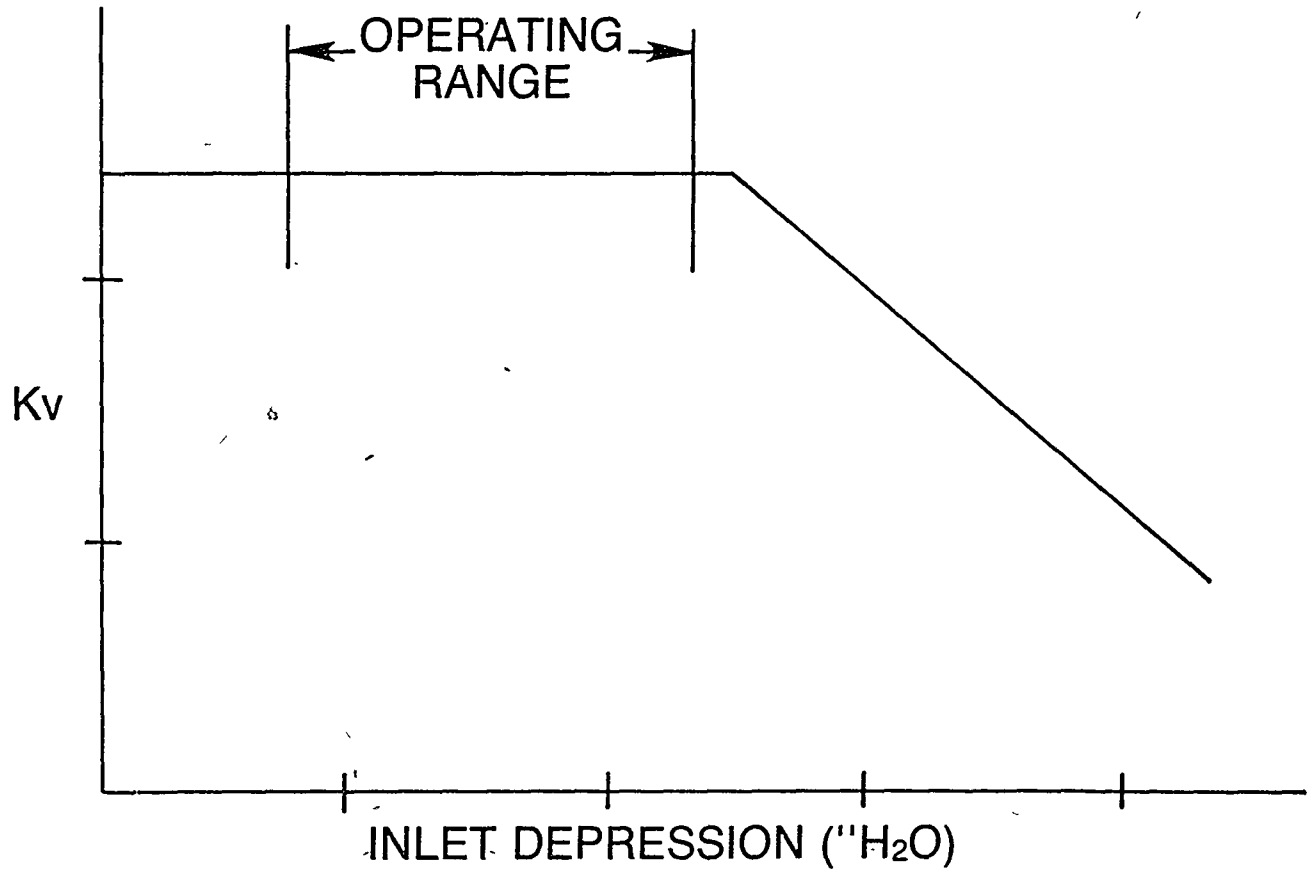


FIGURE N83-7— SONIC FLOW CHOKING

(2) Determine a reference cylinder weight to the nearest 0.01 grams.

(3) Operate the CVS in the normal manner and release a quantity of pure propane or carbon monoxide into the system during the sampling period (approximately 5 minutes).

(4) The calculations of § 86.1344 are performed in the normal way except in the case of propane. the density of propane (17.30 g/ft^3/carbon atom (0.6109 kg/m^3/carbon atom)) is used in place of the density of exhaust hydrocarbons. In the case of carbon monoxide, the density of 32.97 g/ft^3 (1.164 kg/m^3) is used.

(5) The gravimetric mass is subtracted from the CVS measured mass and then divided by the gravimetric mass to determine the percent accuracy of the system.

(6) The cause for any discrepancy greater than ±2 percent must be found and corrected.

§ 86.1320-83 [Reserved]

§ 86.1321-83 Hydrocarbon analyzer calibration.

The FID hydrocarbon analyzer shall receive the following initial and periodic calibration. The HFID shall be operated to a set point ±10° F (±5.5° C) between 300 and 390° F (149 and 199° C).

(a) Initial and periodic optimization of detector response. Prior to its introduction into service and at least annually thereafter the FID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

(1) Follow the manufacturer's instructions for instrument start-up and basic operating adjustment using the appropriate fuel (see § 86.1314) and zero-grade air.

(2) Optimize on the most common operating range. Introduce into the analyzer, a propane in air mixture with a propane concentration equal to approximately 90% of the most common operating range.

(3) Select an operating fuel flow rate that will give near maximum response and least variation in response with minor fuel flow variations.

(4) To determine the optimum air flow, use the fuel flow setting determined above and vary-air flow.

(5) After the optimum flow rates have been determined, they are recorded for future reference.

(b) Initial and periodic calibration. Prior to its introduction into service and monthly thereafter the FID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero-grade air.

(3) Calibrate on each used operating range with propane in air calibration gases having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2% or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2% at any point, the best-fit non-linear equation which represents the data to within 2% of each test point shall be used to determine concentration.

§ 86.1322-83 Carbon monoxide analyzer calibration.

The NDIR carbon monoxide analyzer shall receive the following initial and periodic calibrations:

(a) Initial and periodic interference check. Prior to its introduction into service and annually thereafter the NDIR carbon monoxide analyzer shall be checked for response to water vapor and CO_2:

(1) Follow the manufacturer's instructions for instrument start-up and operation. Adjust the analyzer to optimize performance on the most sensitive range to be used.

(2) Zero the carbon monoxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Bubble a mixture of 3 percent CO_2 in N_2 through water at room temperature and record analyzer response.

(4) An analyzer response of more than 1 percent of full scale for ranges above 300 ppm full scale or more than 3 ppm on ranges below 300 ppm full scale will require corrective action. (Use of conditioning columns is one form of corrective action which may be taken.)

(b) Initial and periodic calibration. Prior to its introduction into service and monthly thereafter the NDIR carbon monoxide analyzer shall be calibrated.

(1) Adjust the analyzer to optimize performance.

(2) Zero the carbon monoxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Calibrate on each used operating range with carbon monoxide in N_2 calibration gases having nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent of less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2% of each test point shall be used to determine concentration.

§ 86.1323-83 Oxides of nitrogen analyzer calibration.

The chemiluminescent oxides of nitrogen analyzer shall receive the following initial and periodic calibration.

(a) Prior to its introduction into service and weekly thereafter the chemiluminescent oxides of nitrogen analyzer shall be checked for NO_2 to NO converter efficiency. Figure N83-8 is a reference for the following steps:

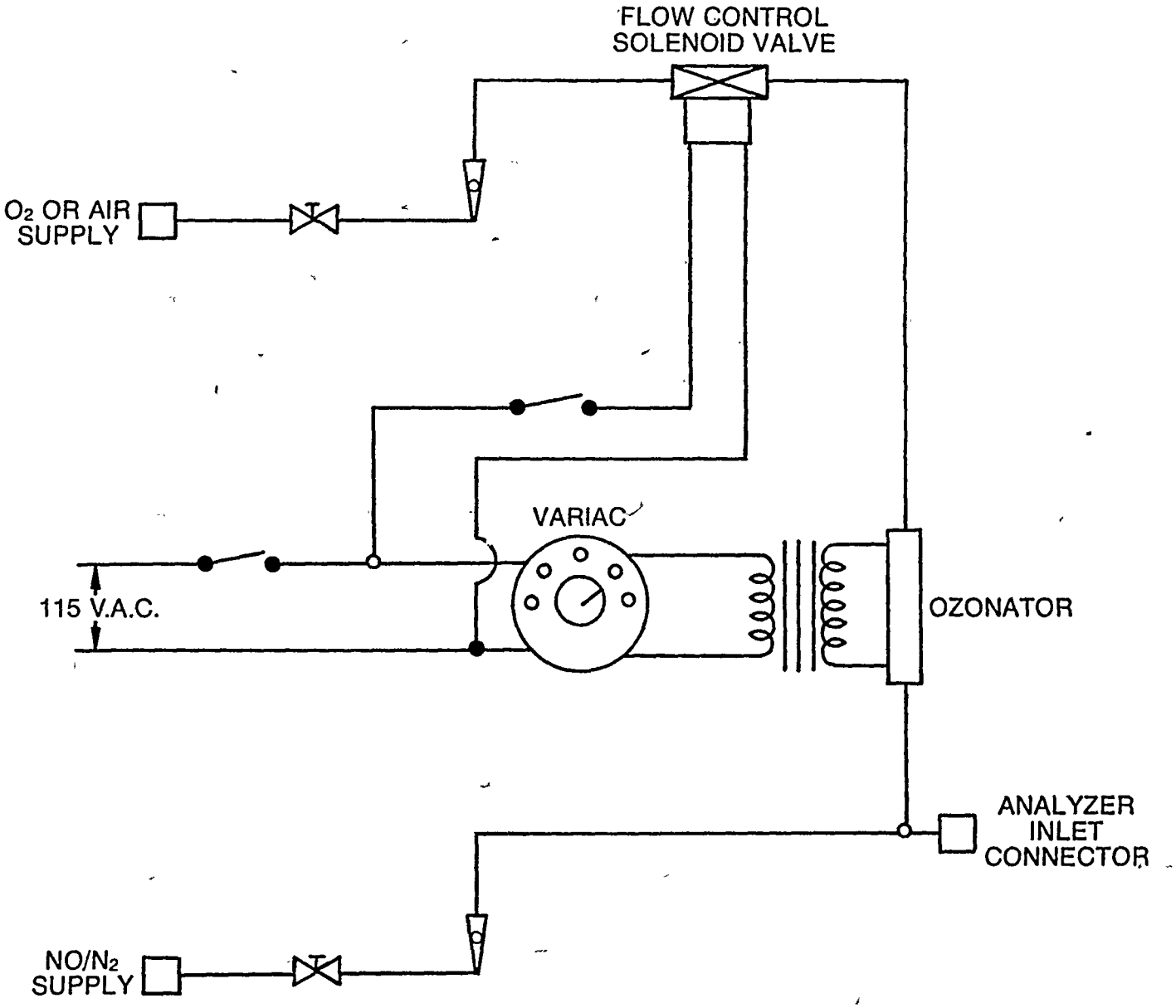
(1) Follow the manufacturer's instructions for instrument start-up and operation. Adjust the analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero-grade air or zero-grade nitrogen.

(3) Connect the outlet of the NOx generator to the sample inlet of the oxides of nitrogen analyzer which has been set to the most common operating range.

(4) Introduce into the NOx generator analyzer-system an NO in nitrogen (N_2) mixture with a NO concentration equal to approximately 80 percent of the most common operating range. The NO_2 content of the gas mixture shall be less than 5 percent of the NO concentration.

[6560-01-C]



(SEE FIG. N83-3 FOR SYMBOL LEGEND)

FIGURE N83-8— NO_x CONVERTER EFFICIENCY DETECTOR

[6560-01-M]

(5) With oxides of nitrogen analyzer in the NO mode, record the concentration of NO indicated by the analyzer.

(6) Turn on the NOx generator O_2 (or air) supply and adjust the O_2 (or air) flow rate so that the NO indicated by the analyzer is about 10 percent less than indicated in step (5). Record the concentration of NO in this $NO+O_2$ mixture.

(7) Switch the NOx generator to the generation mode and adjust the generation rate so that the NO measured on the analyzer is 20 percent of that measured in step (5). There must be at least 10 percent unreacted NO at this point. Record the concentration of residual NO.

(8) Switch the oxides of nitrogen analyzer to the NOx mode and measure total NOx. Record this value.

(9) Switch off the NOx generator but maintain gas flow through the system. The oxides of nitrogen analyzer will indicate the NOx in the $NO+O_2$ mixture. Record this value.

(10) Turn of the NOx generator O_2 (or air) supply. The analyzer will now indicate the NOx in the original NO in N_2 mixture. This value should be no more than 5 percent above the value indicated in step (4).

(11) Calculate the efficiency of the NOx converter by substituting the concentrations obtained into the following equation:

$$\text{Percent Efficiency} = \left[1 + \left(\frac{a-b}{c-d}\right)\right] \times 100$$

where:

a=concentration obtained in step (8),
b=concentration obtained in step (9),
c=concentration obtained in step (6),
d=concentration obtained in step (7).

If converter efficiency is not greater than 90% corrective action will be required.

(b) Initial and periodic calibration. Prior to its introduction into service and monthly thereafter the chemiluminescent oxides of nitrogen analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples. Proceed as follows:

(1) Adjust analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero-grade air or zero-grade nitrogen.

(3) Calibrate on each normally used operating range with NO in N_2 calibration gases with nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2% or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2% at any point, the best-fit non-linear equation which represents the data to within 2% of each test point shall be used to determine concentration.

§ 86.1324-83 Carbon dioxide analyzer calibration.

Prior to its introduction into service and monthly thereafter the NDIR carbon dioxide analyzer shall be calibrated as follows:

(a) Follow the manufacturer's instructions for instrument start-up and operation. Adjust the analyzer to optimize performance.

(b) Zero the carbon dioxide analyzer with either zero-grade air or zero-grade nitrogen.

(c) Calibrate on each normally used operating range with carbon dioxide in N_2 calibration gases having nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2% of each test point shall be used to determine concentration.

§ 86.1325-83 [Reserved]

§ 86.1326-83 Calibration of other equipment.

Other test equipment used for testing shall be calibrated as often as required by the manufacturer or as necessary according to good practice.

§ 86.1327-83 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake-specific emission of hydrocarbons, carbon monoxide, and oxides of nitrogen. The test procedure consists of a "cold" start test after a minimum 12-hour and a maximum 36-hour soak as described in § 86.1332. A "hot" start test follows the "cold" start test after a hot soak of 20 minutes. The idle test of subpart P may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during the cold and hot start tests. The composite samples collected in bags are analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, carbon dioxide, and oxides of nitrogen. A parallel sample of the dilution air is similarly analyzed for hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen.

(b) Engine torque and rpm shall be recorded continuously during both the cold and hot start tests. Data points shall be recorded at least once every second.

(c) Using the torque and rpm feedback signals the brake horsepower is integrated with respect to time for the cold and hot cycles. This produces a brake horsepower-hour value that enables the brake-specific emissions to be determined (see § 86.1344, Calculations; exhaust emissions).

(d)(1) When an engine is tested for exhaust emissions or is operated for service accumulation on an engine dynamometer, the complete engine shall be tested, with all emission control devices installed and functioning.

(2) Evaporative emission controls need not be connected if data are provided to show that normal operating conditions are maintained in the engine induction system.

(3) On air cooled engines, the fan shall be installed.

(4) Additional accessories (e.g., oil cooler, alternators, air compressors, etc.) may be installed with advance approval by the Administrator.

(5) The engine must be equipped with a production type starter.

(e) *Engine cooling.* Means of engine cooling which will maintain the engine operating temperatures (e.g., intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer.

(f) *Exhaust system.*

(1) A chassis-type exhaust system shall be used. The exhaust system shall meet the following requirements:

(i) For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(ii) The exhaust back pressures shall typify those seen in the actual vehicle exhaust system configuration.

§ 86.1328-78 [Reserved]

§ 86.1329-83 [Reserved]

§ 86.1330-83 Test sequence, general requirements.

(a) The test sequence shown in Figure N83-9 shows the major steps encountered as the test engine undergoes the procedures subsequently described.

(b) The average ambient temperature of the test cell and engine intake air shall be maintained at 25° C ±5° C

(77° F ±9° F) throughout the test sequence.

(c) During the generation of the maximum torque curve and the exhaust emission test runs, the humidity level shall be maintained at 75±15 grains of water per pound of dry air and the barometer pressure shall not deviate more than 1 in. Hg from the value measured at the beginning of the test sequence.

(d) The idle test of Subpart P may be run after completion of the hot start exhaust emission test.

[6560-01-C]

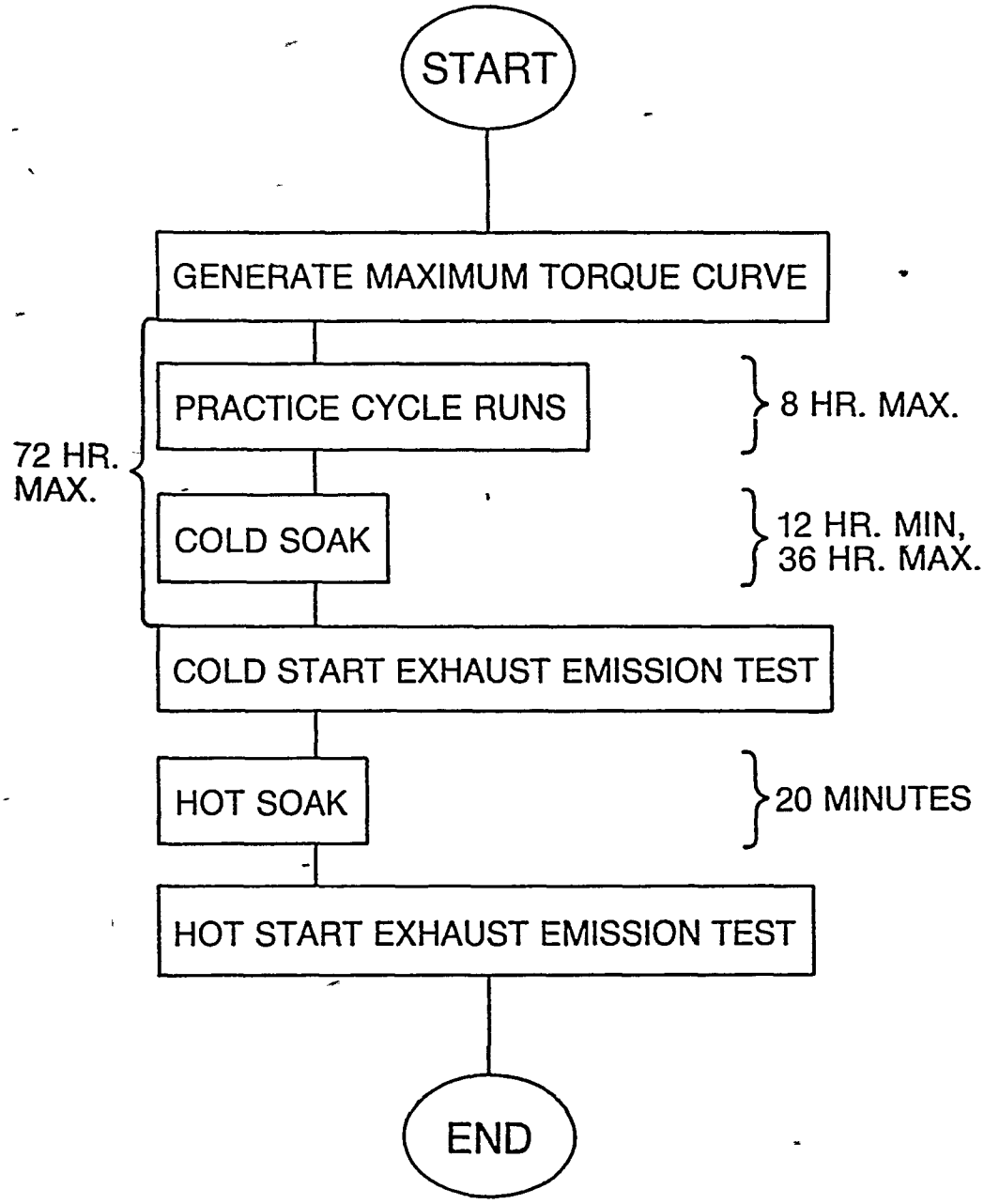


FIGURE N83-9 — TEST SEQUENCE

[6560-01-M]

§ 86.1331-83 [Reserved]

§ 86.1332-83 Pre-test procedures.

(a) Mount test engine on the engine dynamometer.

(b) Determine maximum engine speed.

(1) *Gasoline-fueled.*

(i) For ungoverned engines the maximum engine speed shall be the manufacturer's recommended maximum safe operating speed.

(ii) For governed engines the maximum engine speed shall be the speed at which there is at least a 50 percent drop-off in torque.

(2) *Diesel fueled.* The maximum engine speed shall be the manufacturer's rated speed.

(c) Determine minimum engine speed.

(1) *Gasoline-fueled.* The minimum engine speed is calculated from the following equation:

minimum speed=(curb idle−200 rpm) or 400 rmp, whichever is greater.

(2) *Diesel fueled.* The minimum engine speed is calculated from the following equation:

minimum speed=0.6 (manufacturer's rated speed).

(d) Determine maximum torque curve.

(1) *Gasoline-fueled.*

(i) Start the engine and operate at zero load in accordance with the manufacturer's start-up and warm-up procedures for 1 minute ±30 seconds.

(ii) Operate the engine at a torque equivalent to 10 ±3 percent of the most recent determination of maximum torque for 4 minutes ±30 seconds at 2000 rpm.

(iii) Operate the engine at a torque equivalent to 55 ±5 percent of the most recent determination of maximum torque for 35 minutes ±1 minute at 2000 rpm.

(iv) Operate the engine at idle.

(v) Operate the throttle fully.

(vi) While still maintaining wide-open throttle and full-load obtain minimum engine speed. Maintain minimum engine speed for 15 seconds.

(vii) Record the average torque during the last 5 seconds.

(viii) In 100 rmp increments determine the maximum torque curve from minimum speed to maximum speed. Hold each test point for 15 seconds and record the average torque over the last 5 seconds.

(2) *Diesel fueled.*

(i) Start the engine and operate at idle for 2 to 3 minutes.

(ii) Operate the engine at approximately 50 percent power at the peak torque speed for 5 to 7 minutes.

(iii) Operate the engine at rated speed and maximum horsepower for 25 to 30 minutes.

(iv) *Option.* It is permitted to precondition the engine at rated speed and maximum horsepower until the oil and water temperatures are stabilized. The temperatures are defined as stabilized if they are maintained within 2 percent of point for 2 minutes. The engine must be operated a minimum of 10 minutes for this option. This optional procedure may be substituted for step (iii).

(v) Unload the engine and measure the curb idle speed.

(vi) Operate the engine at wide-open throttle and minimum engine speed. Maintain minimum engine speed for 30 seconds.

(vii) Record the average torque over the last 5 seconds.

(viii) In 200 rpm increments determine the maximum torque curve from minimum speed to the maximum speed (rated speed). Hold each test point for 30 seconds and record the average torque over the last 5 seconds.

(ix) Unload the engine, maintain wide-open throttle, and measure the high idle speed.

(e) Mapping curve generation.

(1) *Gasoline-fueled.*

(i) Fit all data points recorded under (d)(1) of this section with a cubic spline curve generation technique. The resulting curve is the mapping curve and will be used to convert the normalized torque values in the engine cycles (see Appendix I f and g) to actual torque values.

(2) *Diesel.*

(i) Calculate the torque at curb idle using the equation below. Assume a BMEP of 90 PSI.

$$T = \frac{(BMEP)D\ (5252)}{(12)(33000)x}$$

Where:

BMEP = brake mean effective pressure, psi;
T = engine torque, lb.-ft.;
D = total piston displacement, cubic inches;
x = number of revolutions required for each power stroke delivered per cylinder—2 for a four-stroke cycle engine and 1 for a two-stroke cycle engine.

(ii) Fit all the torque values recorded under (d)(2) of this section with a cubic spline curve generation technique.

(iii) Draw a straight-line from the maximum torque at curb idle (as calculated in (e)(2)(i) of this section) to the maximum torque at minimum speed (as calculated from the cubic spline curve generated in (e)(2)(ii) of this section).

(iv) Draw a straight-line between the maximum torque at rated speed (curve value) and zero torque at high idle rpm.

(v) The complete mapping curve is shown in Figure N83-10.

The resulting mapping curve is used to convert the normalized torque values in the engine cycles (see Appendix I) to actual torque values.

(f) *Engine preparation.*

(i) Before the cold soak, practice cycle runs may be performed, but emissions may not be measured. A maximum of 8 hours of practice is allowed.

(ii) After any practice runs turn the engine off and allow to cold soak at 60° to 80°F for a minimum of 12 hours and a maximum of 36 hours.

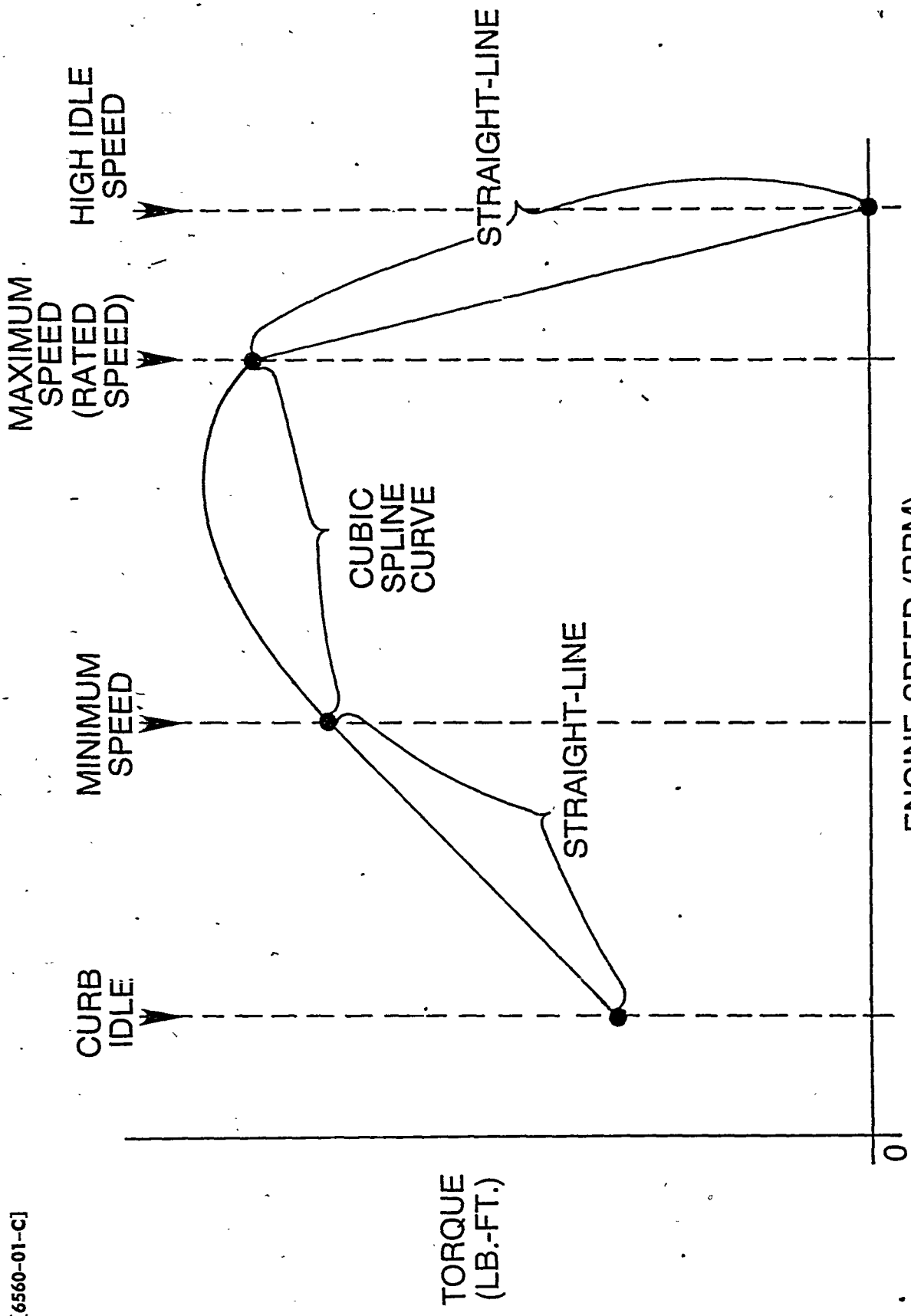


FIGURE N83-10 — MAPPING CURVE FOR DIESEL ENGINES

[6560-01-C]

[6560-01-M]

§ 86.1333-83 [Reserved]

§ 86.1334-83 [Reserved]

§ 86.1335-83 [Reserved]

§ 86.1336-83 Engine starting and restarting.

(a) *Gasoline-fueled engines.* This paragraph (b) applies to gasoline-fueled engines only.

(1) The engine shall be started with a production engine starting-motor according to the manufacturer's recommended starting procedures in the owner's manual. The 24±1 second free idle period shall begin when the engine starts.

(2) *Choke operation:*

(i) Engines equipped with automatic chokes shall be operated according to the manufacturer's operating instructions in the owner's manual, including choke setting and "kick-down" from cold fast idle.

(ii) Engines equipped with manual chokes shall be operated according to the manufacturer's operating instructions in the owner's manual.

(3) The operator may use the choke, throttle, etc. where necessary to keep the engine running.

(4) If the manufacturer's operating instructions in the owner's manual do not specify a warm engine starting procedure, the engine (automatic- and manual-choke engines) shall be started by depressing the throttle about half way and cranking the engine until it starts.

(b) *Diesel engines.* The engine shall be started with a production engine starting-motor according to the manufacturer's recommended starting procedures in the owner's manual. The 24±1 second free idle period shall begin when the engine starts.

(c)(1) If the engine does not start after 15 seconds of cranking, cranking shall cease and the reason for failure to start shall be determined. The gas flow measuring device (or revolution counter) on the constant volume sampler (and the hydrocarbon integrator when testing diesel vehicles, see § 86.1337, Engine dynamometer test run) shall be turned off and the sample selector valves placed in the "standby" position during this diagnostic period. In addition, either the CVS should be turned off or the exhause tube disconnected from the tailpipe during the diagnostic period. If failure to start is an operational error, the engine shall be rescheduled for testing from a cold start.

(2) If a failure to start occurs during the cold portion of the test and is caused by an engine malfunction, corrective action of less than 30 minutes duration may be taken (according to § 86.083-25), and the test continued. The sampling system shall be reactivated at the same time cranking begins. When the engine starts, the timing sequence shall begin. If failure to start is caused by engine malfunction and the engine cannot be started, the test shall be voided and corrective action may be taken according to § 86.083-25. The reasons for the malfunction (if determined) and the corrective action taken shall be reported to the Administrator.

(3) If a failure to start occurs during the hot start portion of the test and is caused by engine malfunction, the engine must be started within one minute of key on. The sampling system shall be reactivated at the same time cranking begins. When the engine starts, the transient engine cycle timing sequence shall begin. If the engine cannot be started within one minute of key on, the test shall be voided, corrective action taken, (according to § 86.083-25), and the engine rescheduled for testing. The reason for the malfunction (if determined) and the corrective action taken shall be reported to the Administrator.

(d) If the engine "false starts," the operator shall repeat the recommended starting procedure (such as resetting the choke, etc.).

(e) *Engine stalling.*

(1) If the engine stalls during the initial idle period of either the cold or hot start test, the engine shall be restarted immediately using the appropriate cold or hot starting procedure and the test continued. If the engine cannot be started before the first non-idle record of the cycle, the test shall be voided.

(2) If the engine stalls anywhere in the cycle, except in the initial idle period, the test shall be voided.

§ 86.1337-83 Engine dynamometer test run.

(a) The following steps shall be taken for each test:

(1) Prepare the engine and dynamometer for the cold start test.

(2) With the sample selector valves in the "standby" position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(3) Start the CVS (if not already on), the sample pumps, the temperature recorder, the engine cooling fan(s) and the heated hydrocarbon analysis recorder (diesel only). (The heat exchanger of the constant volume sampler, if used, diesel hydrocarbon analyzer continuous sample line and filter (if applicable) shall be preheated to their respective operating temperatures before the test begins.)

(4) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

Note.—CFV-CVS sample flowrate is fixed by the venturi design.

(5) Attach the CVS flexible exhaust tube to engine tailpipe(s).

(6) Follow the manufacturer's choke and throttle instructions for cold starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon analyzer system integrator and mark the recorder chart.

(7) As soon as it is determined that the engine is started, start a "free idle" timer.

(8) Allow the engine to idle freely with no-load for 24 ± 1 seconds.

(9) Begin the transient engine cycles such that the first non-idle record of the cycle occurs at 25 ± 1 seconds. The free idle time is included in the 25 ± 1 seconds.

(10) On the last record of the cycle cease sampling, immediately turn the engine off, and start a hot soak timer.

(11) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower. As soon as possible transfer the "cold start cycle" exhaust and dilution air samples to the analytical system and process the samples according to § 83.1340 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(12) Allow the engine to soak for 20 ± 1 minutes.

(13) Prepare the engine and dynamometer for the hot start test.

(14) With the sample selector valves in the "standby" position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(15) Start the CVS (if not already on), the sample pumps, the temperature recorder, the engine cooling fan and the heated hydrocarbon analysis recorder (diesel only). (The heat exchanger of the constant volume sampler, if used, diesel hydrocarbon analyzer continuous sample line and filter (if applicable) shall be preheated to their respective operating temperatures before the test begins.)

(16) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

NOTE.—CFV-CVS sample flowrate is fixed by the venturi design.

(17) Follow the manufacturer's choke and throttle instruction for hot starting. Simultaneously start the engine and begin exhaust and dilution air sampling.

(18) As soon as it is determined that the engine is started, start a "free idle" timer.

(19) Allow the engine to idle freely with no-load for 24 ± 1 seconds.

(20) Begin the transient engine cycle such that the first non-idle record of

the cycle occurs at 25 ± 1 seconds. The free idle is included in the 25 ± seconds.

(21) On the last record of the cycle cease sampling.

(22) As soon as possible transfer the "hot start cycle" exhaust and dilution air samples to the analytical system and process the samples according to § 86.1340 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(23) Disconnect the exhaust tube from the engine tailpipe(s).

(24) The CVS may be turned off, if desired.

§ 86.1338-83 [Reserved]

§ 86-1339-83 [Reserved]

§ 86.1340-83 Exhaust sample analysis.

The following sequence of operations shall be performed in conjunction with each series of measurements:

(a) Zero the analyzers and obtain a stable zero reading. Recheck after tests.

(b) Introduce span gases and set instrument gains. In order to avoid corrections, span and calibrate at the same flow rates used to analyze the test sample. Span gases shall have concentrations equal to 75 to 100 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on chart.

(c) Check zeros; repeat the procedure in paragraphs (a) and (b) of this section if required.

(d) Check flow rates and pressures.

(e) Measure HC, CO, CO_2 and NOx concentrations of samples.

(f) For diesel engines, continuously record (integrate electronically if desired) dilute hydrocarbon emission levels during test. Background samples are collected in sample bags and analyzed as above.

(g) Check zero and span point. If difference is greater than 2% of full scale, repeat the procedure in paragraphs (a) through (f).

§ 86.1341-83 [Reserved]

§ 86.1342-83 Information required.

The following information, as applicable, shall be recorded for each test:

(a) *Engine description and specification.* A copy of the information specified in this paragraph must accompany each engine sent to the Administrator for compliance testing. The manufacturer need not record the information specified in this paragraph for each test if the information, with the exception of subparagraph (3) is included in the manufacturer's Part I.

(1) Engine-system combination.

(2) Engine identification numbers.

(3) Number of hours of operation accumulated on engine.

(4) Manufacturer's rated maximum horsepower and torque.

(5) Manufacturer's rated maximum horsepower and torque speeds.

(6) Engine displacement.

(7) Governed speed.

(8) Maximum safe engine speed (ungoverned engines).

(9) Manufacturer's start-up procedure.

(10) Curb-idle rpm.

(11) Maximum exhaust system back pressure (diesel engines only).

(b) *Test data; general.* This information may be recorded at any time between 4 hours prior to the test and 4 hours after the test.

(1) Engine-system combination.

(2) Engine identification number.

(3) Instrument operator(s).

(4) Engine operator(s).

(5) Number of hours of operation accumulated on the engine prior to beginning the test sequence (Figure N83-8).

(6) Fuel identification, including H/C ratio.

(7) Date of most recent analytical assembly calibration.

(8) All pertinent instrument information such as tuning, gain, serial numbers, detector number, calibration curve numbers, etc. As long as this information is traceable, it may be summarized by system number or analyzer identification numbers.

(c) *Test data; pre-test.*

(1) Date and time of day.

(2) Test number.

(3) Engine intake air temperature.

(4) Barometric pressure.

(5) Engine intake humidity.

(6) Maximum torque curve as determined in § 86.1332.

(7) Measured maximum horsepower and torque speeds.

(8) Measured maximum horsepower and torque.

(9) Maximum engine speed.

(10) Minimum engine speed.

(11) High idle engine speed (diesel engines only).

(12) Calculated torque at curb-idle (diesel engines only).

(13) Fuel consumption at maximum power and torque (diesel engines only).

(14) Curb-idle fuel flow rate.

(d) *Test data.*

(1) Total number of hours of operation accumulated on the engine prior to starting emission test.

(2) Cold soak time interval.

(3) Recorder charts: Identify zero, span, exhaust gas, and dilution air sample traces.

(4) Test cell barometric pressure.

NOTE.—A central laboratory barometer may be used: *Provided*, That individual test cell barometric pressure are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(5) Engine intake air temperature and humidity.

(6) Pressure of the mixture of exhaust and dilution air entering the CVS metering device, the pressure increase across the device, and the temperature at the inlet. The temperature may be recorded continuously or digitally to determine temperature variations.

(7) The number of revolutions of the positive displacement pump accumulated during each test phase while exhaust samples are being collected. The number of standard cubic feet metered by a critical flow venturi during each test phase would be the equivalent record for a CFV-CVS.

(8) The humidity of the dilution air.

NOTE.—If conditioning columns are not used (see § 86.1322 and § 86.1344) this measurement can be deleted. If the conditioning columns are used and the dilution air is taken from the test cell, the ambient humidity can be used for this measurement.

(9) Temperature set point of the heated sample line and heated hydrocarbon detector temperature control system (for diesel engines only).

(10) Integrated brake horsepower-hours for each test phase.

(11) Record engine torque and engine rpm continuously. The maximum time interval between recorded data points is one second.

(12) Total number of hours of operation accumulated on the engine after completing the test sequence described in Figure N83-8.

§ 86.1343-83 [Reserved]

§ 86.1344-83 Calculations; exhaust emissions.

(a) The final reported transient emission test results shall be computed by use of the following formula:

$$A_{wm} = \frac{1/7(g_c) + 6/7(g_H)}{1/7(BHP\text{-}Hr_C) + 6/7(BHP\text{-}Hr_H)}$$

Where:

A_{wm}=Weighted mass emission level (HC, CO, CO_2, or NO_x) in grams per brake horsepower hour.

g_c=Mass emission level in grams, measured during the cold start test.

g_H=Mass emissions level in grams, measured during the hot start test.

BHP-HR_c=Total brake horsepower-hour (brake horsepower integrated with respect to time) for the cold start test.

BHP-HR_H=Total brake horsepower-hour (brake horsepower integrated with respect to time) for the hot start test.

(b) The mass of each pollutant for the cold start test and the hot start

test is determined from the following equations:

(1) Hydrocarbon mass:

$HC_{mass}=V_{mix} \times Density_{HC} \times (HC_{conc}/1{,}000{,}000)$

(2) Oxides of nitrogen mass:

$NOx_{mass}=V_{mix} \times Density_{NO2} \times K_H \times (NOx_{conc}/1{,}000{,}000)$

(3) Carbon monoxide mass:

$CO_{mass}=V_{mix} \times Density_{CO} \times (CO_{conc}/1{,}000{,}000)$

(4) Carbon dioxide mass:

$CO_{2mass}=V_{mix} \times Density_{CO2} \times (CO_{2conc}/100)$

(c) Meaning of symbols:

(1)

HC_{mass}=Hydrocarbon emissions, in grams per test phase.

Density=Density of hydrocarbons is 16.33 g/ft³ (.5767 kg/m³), assumng an average carbon to hydrogen ratio of 1:1.85, at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

HC_{conc}=Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane × 3.

$$HC_{conc}=HC_e-HC_d[1-(1/DF)]$$

where:

HC_e=Hydrocarbon concentration of the dilute exhaust sample or, for diesel, average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated HC traces, in ppm carbon equivalent.

HC_d=Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

(2)

NOx_{mass}=Oxides of nitrogen emissions, in grams per test phase.

$Density_{NO2}$=Density of oxides of nitrogen is 54.16 g/ft³ (1.913 kg/m³), assuming they are in the form of nitrogen dioxide, at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

NOx_{conc}=Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm.

$$NOx_{conc}=NOx_e-NOx_d[1-(1/DF)]$$

where:

NOx_e=Oxides of nitrogen concentration of the dilute exhaust sample as measured, in ppm.

NOx_d=Oxides of nitrogen concentration of the dilute air as measured, in ppm.

(3)

CO_{mass}=Carbon monoxide emissions, in grams per test phase.

$Density_{CO}$=Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at 68°F (20°C) and 760 mm Hg (101.3 kPa) pressure.

CO_{conc}=Carbon monoxide concentration of the dilute exhaust sample corrected for backgroud, water vapor, and CO_2 extraction, in ppm.

$$CO_{conc}=CO_e-CO_d[1-(1/DF)]$$

where:

CO_e=Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in ppm. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.

$$CO_e=[1-0.01925CO_{2e}-0.000323R]CO_{em}$$

Where:

CO_{em}=Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

CO_{2e}=Carbon dioxide concentration of the dilute exhaust sample, in percent.

R=Relative humidity of the dilution air, in percent (see § 86.1342).

CO_d=Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

$$CO_d=(1-0.000323R)CO_{dm}$$

Where:

CO_{dm}=Carbon monoxide concentration of the dilution air sample as measured, in ppm.

NOTE.—If a CO instrument which meets the criteria specified in § 86.1311 is used and the conditioning column has been deleted, CO_{em} can be substituted directly for CO_e and CO_{dm} can be substituted directly for CO_d.

(4)

CO_{2mass}=Carbon dioxide emissions, in grams per test phase.

$Density_{CO2}$=Density of carbon dioxide is 51.85 g/ft³ (1.843 kg/m³), at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

CO_{2conc}=Carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent.

$$CO_{2conc}=CO_{2e}-CO_{2d}[1-(1/DF)]$$

Where:

CO_{2d}=Carbon dioxide concentration of the dilution air as measured, in percent.

(5)

$$DF=13.4/[CO_{2e}+(HC_e+CO_e)\times 10^{-4}]$$

K_H=Humidity correction factor.

$K_H=1/[1-0.0047(H-75)]$ for SI units $=1/[1-0.0329(H-10.71)]$

Where:

H=Absolute humidity in grains (grams) of water per pound (kilogram) of dry air.

$H=[(43.478)R_a\times P_d]/[P_B-(P_d\times R_a/100)]$ for SI units, $H=[(6.211)R_a\times P_d]/[P_B-(P_d\times R_a/100)]$

R_a=Relative humidity of the ambient air, in percent.

P_d=Saturated vapor pressure, in mm Hg (kPa) at the ambient dry bulb temperature:

P_B=Barometric pressure, in mm Hg (kPa).

V_{mix}=Total dilute exhaust volume in cubic feet per test phase corrected to standard conditions (528°R (293°K) and 760 mm Hg (101.3 kPa)).

For PDP-CVS, V_{mix} is:

$$V_{mix}=V_o \times \frac{N(P_B-P_A)(528\ R)}{(760\ mm\ Hg)(T_p)}$$

for SI units,

$$V_{mix}=V_o \times \frac{N(P_B-P_A)(293.15\ K)}{(101.3\ kPa)(T_p)}$$

Where:

V_o=Volume of gas pumped by the positive displacement pump, in cubic feet (cubic meters) per revolution. This volume is dependent on the pressure differential across the positive displacement pump.

N=Number of revolutions of the positive displacement pump during the test phase while samples are being collected.

P_B=Barometric pressure, in mm Hg (kPa).

P_A=Pressure depressions below atmospheric measured at the inlet to the positive displacement pump, in mm Hg (kPa) (during an idle mode).

T_p=Average temperature of dilute exhaust entering positive displacement pump during test, °R (°K).

(d) Sample calculation of mass values of exhaust emissions:

(1) Assume the following test results:

	Cold start cycle test results	Hot start cycle test results
V_{mix}	6924 ft³	6873 ft³
R	30.2%	30.2%
R_a	30.2%	30.2%
P_B	735 mm Hg	735 mm Hg
P_d	22.676 mm Hg	22.676 mm Hg
HC_e	132.07 ppm C equiv.	86.13 ppm C equiv.
NOx_e	7.86 ppm	10.98 ppm
CO_{em}	171.22 ppm	114.28 ppm
CO_{2e}	.178%	.381%
HC_d	3.60 ppm C equiv.	8.70 ppm C equiv.
NOx_d	0.0 ppm	0.10 ppm
CO_{dm}	0.89 ppm	0.89 ppm
CO_{2d}	0.0%	0.038%
BHP-HR	0.259	0.347

Then:

Cold Start Test

$H=[(43.478)(30.2)(22.676)]/[735-(22.676)(30.2)/100]=41$ grains of water per pound of dry air.

$K_H=1/[1-0.0047(41-75)]=0.862$

$CO_e=[1-0.01925(.178)-0.000323(30.2)]171.22=169.0$ ppm

$CO_d=[1-0.000323(30.2)]0.89=.881$ ppm

$DF=13.4/[.178+(132.1+168.9)\ (10^{-4})]=64.265$

$HC_{conc}=132.1-3.6[1-(1/64.265)]=128.6$ ppm

$HC_{mass}=6924(16.33)(128.6/1{,}000{,}000)=14.53$ grams

$NOx_{conc}=7.86-0.0[1-(1/64.265)]=7.86$ ppm

$NOx_{mass}=6924(54.16)(.862)(7.86/1{,}000{,}000)=2.54$ grams

$CO_{conc}=169.0-.881[1-(1/64.265)]=168.0$ ppm

$CO_{mass}=6924(32.97)(168.0/1{,}000{,}000)=38.35$ grams

$CO_{2conc}=.178-0[1-1/64.265)]=.178\%$

$CO_{2mass}=6924(51.85)(.178/100)=639$ grams

Hot Start Test

Assume similar calculations result in the following:

$HC_{mass}=8.72$ grams

$NOx_{mass}=3.49$ grams

$CO_{mass}=25.70$ grams

$CO_{2mass}=1226$ grams

(2) Weighted mass emission results:

$$HC_{wm} = \frac{1/7(14.53) + 6/7(8.72)}{1/7(0.259) + 6/7(0.347)}$$

$$= 28.6 \text{ grams/BHP-HR}$$

$$NOx_{wm} = \frac{1/7(2.54) + 6/7(3.49)}{1/7(0.259) + 6/7(0.347)}$$

$$= 10.0 \text{ grams/BHP-HR}$$

$$CO_{wm} = \frac{1/7(38.35) + 6/7(25.70)}{1/7(0.259) + 6/7(0.347)}$$

$$= 82.2 \text{ grams/BHP-HR}$$

$$CO_{2wm} = \frac{1/7(639) + 6/7(1226)}{1/7(0.259) + 6/7(0.347)}$$

$$= 3415 \text{ grams/ BHP-HR}$$

(e) The final reported brake-specific fuel consumption (BSFC) shall be computed by use of the following formula:

$$BSFC = \frac{1/7(M_C) + 6/7(M_H)}{1/7(BHP\text{-}HR_C) + 6/7(BHP\text{-}HR_H)}$$

Where:

BSFC=brake-specific fuel consumption in pounds of fuel per brake horsepower-hour (lbs/BHP-HR)

M_C=mass of fuel, in pounds, used by the engine during the cold start test.

M_H=mass of fuel, in pounds, used by the engine during the hot start test.

$BHP\text{-}HR_C$=total brake horsepower-hours (brake horsepower integrated with respect to time) for the cold start test.

$BHP\text{-}HR_H$=total brake horsepower-hours (brake horsepower integrated with respect to time) for the hot start test.

(f) The mass of fuel for the cold start and hot start test is determined from the following equation:

$$M=(G_S/R)(1/453.6)$$

(g) Meaning of symbols:

M=Mass of fuel, in pounds, used by the engine during the cold or hot start test.

G_S=Grams of carbon measured during the cold or hot start test.

$G_S=[12.011/(12.011+\alpha(1.008))]HC_{mass}+0.429CO_{mass}+0.273\ CO_{2_{mass}}$

where:

HC_{mass}=Hydrocarbon emissions, in grams for cold or hot start test.

CO_{mass}=Carbon monoxide emissions, in grams for cold or hot start test.

$CO_{2_{mass}}$=Carbon dioxide emissions, in grams for cold or hot start test.

α=The measured hydrogen to carbon ratio of the fuel.

R=The grams of carbon in the fuel per gram of fuel.

$R=12.011/[12.011+\alpha(1.008)]$

(h) Sample calculation of brake-specific fuel consumption:

(1) Assume the following test results:

	Cold start cycle test results	Hot start cycle test results
BHP-HR	6.945	7.078
α	1.85	1.85
HC_{mass}	37.08 grams	28.82 grams
CO_{mass}	357.69 grams	350.33 grams
$CO_{2_{mass}}$	5419.62 grams	5361.32 grams

Then:

G_S for cold start test=[12.011/(12.011+(1.85)(1.008))](37.08+0.429(357.69)+0.273(5419.62)=1665.10 grams

G_S for hot start test=[12.011/(12.011+(1.85)(1.008))](28.82)+0.429(350.33)+0.273(5361.32)=1638.8 grams

$R=12.011/[12.011+1.85(1.008)]=.866$

$M_C=(1665.10/.866)(1/453.6)=4.24$ lbs.

$M_H=(1638.88/.866)(1/453.6)=4.17$ lbs.

(2) Brake-specific fuel consumption results:

$$BSFC = \frac{1/7(4.24) + 6/7(4.17)}{1/7(6.945) + 6/7(7.078)} = .592 \text{ lbs.of fuel/BHP-HR}$$

25. A new Subpart P is proposed to be added to Part 86 and reads as follows:

Subpart P—Emission Regulations for New Gasoline-Fueled and Diesel Heavy-Duty Engines and Vehicles and New Light-Duty Trucks; Idle Test Procedures

NOTE.—This proposed subpart is concerned only with regulations for heavy-duty vehicles and engines. That the title mentions light-duty trucks means only that an independent Notice of Proposed Rulemaking, applicable to light-duty trucks, recently has been or shortly will be published; the procedures of this subpart were written to apply to that proposed rulemaking as well. As it is now proposed, however, this subpart applies only to heavy-duty vehicles and engines.

Sec.

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86.1502-83 Definitions.
86.1503-83 Abbreviations.
86.1504-83 Section numbering; construction.
86.1505-83 Introduction; structure of subpart.
86.1506-83 Equipment required and specifications; overview.
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86.1509-83 Exhaust gas sampling system.
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86.1513-83 Fuel specifications.
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86.1516-83 Calibration; frequency and overview.
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86.1519-83 CVS calibration.
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86.1521-83 Hydrocarbon analyzer calibration.
86.1522-83 Carbon monoxide analyzer calibration.
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86.1524-83 Carbon dioxide analyzer calibration.
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86.1526-83 Calibration of other equipment.
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86.1529-83 [Reserved]
86.1530-83 Test sequence; general requirements.
86.1531-83 [Reserved]
86.1532-83 [Reserved]
86.1533-83 [Reserved]
86.1534-83 [Reserved]
86.1535-83 [Reserved]
86.1536-83 [Reserved]
86.1537-83 Idle test run.
86.1538-83 [Reserved]
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86.1540-83 Idle exhaust sample analysis.
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86.1542-83 Information required.
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86.1544-83 Calculations; idle exhaust emissions.

Subpart P—Emission Regulations for New Gasoline-Fueled and Diesel Heavy-Duty Engines and Vehicles and New Light-Duty Trucks; Idle Test Procedures

§ 86.1501-83 Scope; applicability.

This subpart contains gaseous emission idle test procedures for heavy-duty gasoline-fueled engines and vehicles, heavy-duty diesel engines and vehicles, and light-duty trucks. It applies to 1983 and later model years.

§ 86.1502-83 Definitions.

The definitions in § 86.083-2 apply to this subpart.

§ 86.1503-83 Abbreviations.

The abbreviations in § 86.083-3 apply to this subpart.

§ 86.1504-83 Section numbering; construction.

(a) The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

EXAMPLE: Section § 86.1511-83 applies to the 1983 and subsequent model years until superseded. If a section § 86.1511-85 is promulgated, it would take effect beginning with the 1985 model year; § 86.1511-83 would apply to model years 1983 and 1984.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

(c) Unless indicated, all provisions in this subpart apply to gasoline-fueled and diesel heavy-duty engines and vehicles and light-duty trucks.

§ 86.1505-83 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform idle exhaust emission tests on gasoline-fueled and diesel heavy-duty engines and vehicles and light-duty trucks. Subpart A sets forth the testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) Four topics are addressed in this subpart. Sections 86.1505 through 86.1515 set forth specifications and equipment requirements; §§ 86.1516 through 86.1526 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximately chronological order) in §§ 86.1527 through 86.1542; and calculation formulas are found in § 86.1544.

§ 86.1506-83 Equipment required and specifications; overview.

(a) This subpart contains procedures for idle exhaust emission tests on diesel or gasoline-fueled heavy-duty vehicles and engines and light-duty trucks. Equipment required and specifications are as follows:

(1) *Exhaust emission tests.* All vehicles subject to this subpart are tested for exhaust emissions. Diesel and gasoline-fueled vehicles and engines are tested identically. Necessary equipment and specifications appear in §§ 86.1509 through 86.1511.

(2) *Fuel and analytical gas specifications.* Fuel requirements for idle exhaust emission testing are specified in § 86.1513. Analytical gases are specified in § 86.1514.

§ 86.1507-83 (Reserved)

§ 86.1508-83 (Reserved)

§ 86.1509-83 Exhaust gas sampling system.

(a) The exhaust gas sampling system shall transport the exhaust sample from the engine or vehicle tailpipe to the analysis system in such a manner as to maintain the integrity of the sample constituents that are to be analyzed.

(b) The sample system shall supply a dry sample (i.e., water removed) to the analysis system.

(c) A CVS sampling system with bag analysis as specified in Subpart N is permitted. The inclusion of an additional raw CO_2 analyzer as specified in Subpart D is required if the CVS system is used in order to accurately determine the CVS dilution factor (D.F.). The heated sample line specified in Subpart D for raw emission measurements is not required for the raw CO_2 measurement.

(d) A raw exhaust sampling system as specified in Subpart D is permitted.

§ 86.1510-83 (Reserved)

§ 86.1511-83 Exhaust gas analysis system.

(a) Analyzers used for this subpart shall meet the following specifications.

(1) The analyzers used must have ranges such that

(i) the carbon monoxide (CO) idle standard specified in § 86.083-10 and § 86.083-11 for heavy-duty engines or vehicles and for light-duty trucks will provide an analyzer response between 45 and 90 percent of full scale deflection on the CO analyzer.

(ii) the hydrocarbon (HC) idle standard specified in § 86.083-10 and § 86.083-11 for heavy-duty engines or vehicles and for light-duty trucks will provide an analyzer response between 45 and 90 percent of full scale deflection on the HC analyzer. The standard in ppmC can be divided by 6.0 to obtain n-hexane values (ppmC-6).

(2) The resolution of the readout device for the ranges specified in (a)(1) of this section shall be equal to or less than the following:

(i) 0.05 percent for a carbon monoxide analyzer, and

(ii) 5 ppmC-6 (n-hexane) for a hydrocarbon analyzer.

(3) For the ranges specified in (a)(1) of this section the precision shall be less than ±3 percent of full scale deflection. The precision is defined as 2 times the standard deviation of 5 repetitive responses to a given calibration gas.

(4) For the ranges specified in (a)(1) of this section, the mean response to a zero calibration gas shall not exceed ±3 percent of full scale during a one hour period.

(5) For the ranges specified in (a)(1) of this section the mean calibration response shall be less than ±3 percent of full scale during a one hour period. The calibration response is defined as the analyzer response to a calibration gas after the analyzer has been spanned by the electrical spanning network at the beginning of the one hour period.

(6) The analyzer must respond to an instantaneous step change at the entrance to the sampling system with a response equal to 90 percent of that step change within 15 seconds or less on the ranges specified in (a)(1) of this section. The step change shall be at least 60 percent of full scale deflection.

(7) The interference gases listed shall individually or collectively produce an analyzer reading less than ±2 percent of full scale on the ranges specified in (a)(1) of this section.

Interference gas	Concentration	Applicable analyzer
CO_2	14%	HC, CO
C_3H_8	1%	CO
CO	7%	HC
H_2O	Saturated Vapor at 200° F.	HC, CO
NOx	1,000 ppm	HC, CO
O_2	5%	HC, CO

(8) The analyzer shall be able to meet the specifications in paragraph (a) of this section.

(i) after a 30 minute warm-up from the prevailing ambient conditions,

(ii) between the ambient temperatures of −20° C and 45° C (−4° F to 113° F),

(iii) between 0 to 85 percent relative humidity, and

(iv) during flow variations of ±50 percent.

(b) The following analysis systems are permitted when the analysis system is in a temperature controlled environment.

(1) A CVS sampling system with bag analysis as specified in Subpart N provided suitable corrections are used to convert dilute wet-basis results to raw dry-basis results. The inclusion of an additional raw CO_2 analyzer as specified in Subpart D is required if the CVS system is used in order to accurately determine the CVS dilution factor (D.F.).

(c) A raw exhaust analysis system as specified in Subpart D provided suitable corrections are used to convert raw wet-basis results to raw dry-basis results. Measurements made on a raw dry-basis do not need correction.

§ 86.1512-83 (Reserved)

§ 86.1513-83 Fuel specifications.

Fuel meeting the engine or vehicle manufacturer's recommendations to the ultimate purchaser shall be used. Fuels meeting the specifications in § 86.1313-83 for heavy-duty engines or vehicles, or § 86.113-79 for light-duty trucks as applicable are permitted.

§ 86.1514-83 Analytical gases.

(a) *Analyzer gases.*

(1) Calibration gases for the CO analyzer shall be single blends using nitrogen as the diluent.

(2) Calibration gases for the (n-hexane) HC analyzer shall be single blends of propane using nitrogen as the diluent. The conversion factor from propane (ppmC-3) to n-hexane (ppmC-6) shall be:

ppm propane (0.50) = ppm n-hexane.

(3) Ambient air may be used for zero gas provided it is treated to remove im-

purities or drawn from a source that would tend to minimize CO and HC background levels (e.g., a large room with no vehicles, ambient air, etc.).

(b) Calibration gases shall be traceable to within 3 percent of NBS gas standards, or other standards which have been approved by the Administrator.

(c) Calibration gases shall be equivalent in concentration (± 10%) to the standards specified in § 86.083-10 and § 86.083-11 for heavy-duty engines or vehicles and for light-duty trucks.

(d) If the CVS sampling system is used, the analytical gases specified in Subpart N shall be used.

(e) If the raw sampling system (Subpart D) is used, the analytical gases specified in Subpart D shall be used.

§ 86.1515-83 (Reserved)

§ 86.1516-83 Calibration; frequency and overview.

(a) Calibrations shall be performed as specified in §§ 86.1518 through 86.1526.

(b) At least weekly or after any maintenance which could alter calibration, check the calibration of the HC and CO analyzers. Adjust or repair the analyzer as necessary.

(c) Water traps, filters, or conditioning columns should be checked at least daily.

(d) If the sampling and analysis procedures of Subpart D or N are used, the required calibrations and their frequencies are specified in their respective Subparts.

§ 86.1517-83 (Reserved)

§ 86.1518-83 (Reserved)

§ 86.1519-83 CVS calibration.

If the CVS system is used for sampling during the idle emission test, the calibration instructions are specified in § 86.1319-83 of Subpart N.

§ 86.1520-83 (Reserved)

§ 86.1521-83 Hydrocarbon analyzer calibration.

(a) *Initial check.*

(1) Follow the manufacturers instructions for instrument start-up and operation. Adjust the analyzer to optimize performance on the range specified in § 86.1511(a)(1).

(2) Calibrate the analyzer with the calibration gas specified in § 86.1514(c).

(3) Adjust the electrical span network such that the electrical span point is correct when the analyzer reads the calibration gas correctly.

(4) Determine that the analyzer complies with the specifications in § 86.1511.

(b) *Periodic check.* Follow steps (a)(1), (2), and (3) of this section as specified in § 86.1516(b). Adjust or repair the analyzer as necessary.

(c) If the analysis procedures of Subpart D or N are used, the required calibrations are specified in their respective Subparts.

§ 86.1522-83 Carbon monoxide analyzer calibration.

(a) *Initial check.*

(1) Follow the manufacturers instructions for instrument start-up and operation. Adjust the analyzer to optimize performance on the range specified in § 86.1511(a)(1).

(2) Calibrate the analyzer with the calibration gas specified in § 86.1514(c).

(3) Adjust the electrical span network such that the electrical span point is correct when the analyzer reads the calibration gas correctly.

(4) Determine that the analyzer complies with the specifications in § 86.1511.

(b) *Periodic check.* Follow steps (a)(1), (2), and (3) of this section as specified by § 86.1516(b). Adjust or repair the analyzer as necessary.

(c) If the analysis procedures of Subpart D or N are used, the required calibrations are specified in their respective Subparts.

§ 86.1523-83 (Reserved)

§ 86.1524-83 Carbon dioxide analyzer calibration.

(a) The calibration requirements for the dilute-sample carbon dioxide analyzer are specified in Subpart N.

(b) The calibration requirements for the raw carbon dioxide analyzer are specified in Subpart D.

(c) If another sampling and analyzing system is used that does not require carbon dioxide (CO_2) analysis, this section may be disregarded.

§ 86.1525-83 (Reserved)

§ 86.1526-83 Calibration of other equipment.

Other test equipment used for testing shall be calibrated as often as required by the manufacturer or as necessary according to good practice.

§ 86.1527-83 Idle test procedure; overview.

(a) The idle emission test procedure is designed to determine the raw concentrations (in parts per million of carbon) of hydrocarbons and carbon monoxide in the exhaust flow at idle. The test procedure begins with a warm engine, required to be at the normal operating temperature. (For example, the warm-up for an engine may be a transient dynamometer test, or for a vehicle it may be any convenient operation).

(b) *Vehicles.*

(1) If the idle test is being performed on a vehicle, all emission control systems shall be intact and functioning.

(c) *Engines.*

(1) If the idle test is being performed on an engine, the required engine configuration is specified in Subpart N.

§ 86.1528-83 (Reserved)

§ 86.1529-83 (Reserved)

§ 86.1530-83 Test sequence; general requirements.

The test sequence shown in Figure P83-1 shows the major steps encountered during the idle test described by the subsequent procedures. The average ambient temperature of the engine test cell (in the case of an engine dynamometer test) or the vehicle environment (in the case of a vehicle test) shall be between −20° C and 45° C (−4° F to 113° F).

[6560-01-C]

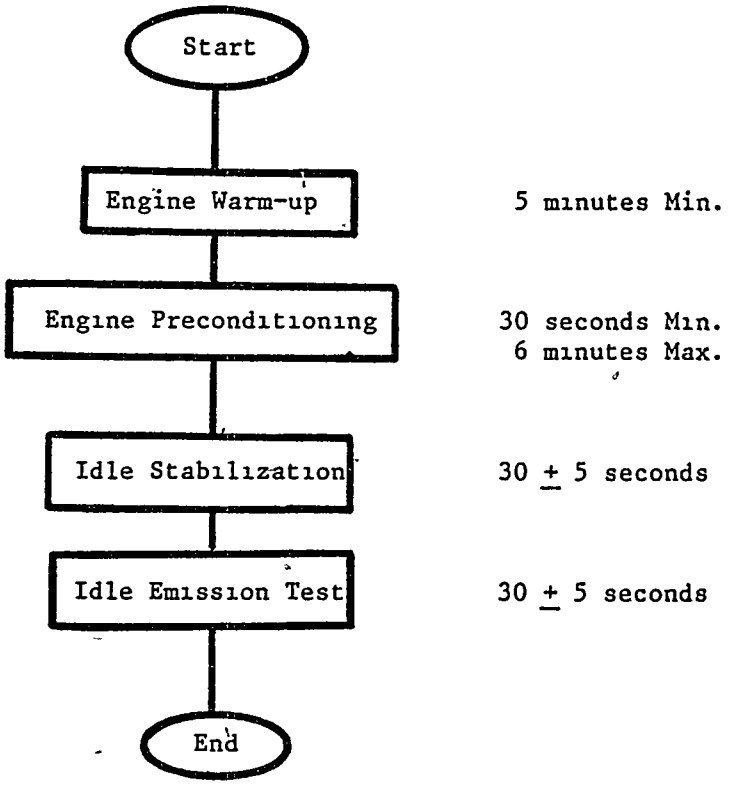

Figure P83-1 - Test Sequence

[6560-01-M]

§ 86.1531-83 (Reserved)

§ 86.1532-83 (Reserved)

§ 86.1533-83 (Reserved)

§ 86.1534-83 (Reserved)

§ 86.1535-83 (Reserved)

§ 86.1536-83 (Reserved)

§ 86.1537-83 Idle test run.

(a) *Test run.* The following steps shall be taken for each test:

(1) Achieve normal engine operating parameters. The transient emission dynamometer test is an acceptable technique to warm-up the engine to normal operating parameters for an engine test. If the transient emission test is not performed prior to the idle emission test, the engine may be warmed-up according to § 86.1332-83(d)(1) (i) through (iii) (applies to gasoline-fueled engines) or § 86.1332-83(d)(2) (i) through (iii) (applies to diesel engines). For a vehicle test, sufficient vehicle operation shall take place to achieve normal operating parameters.

(2) Check the device(s) for removing water from the exhaust sample and the sample filter(s). Remove any water from the water trap(s). Clean and replace the filter(s) as necessary.

(3) Set the zero and span points of the HC and CO analyzers with the electrical spanning network. It is permitted to set the analyzer span with calibration gases.

(4) Hook-up or attach the sampling system to the tailpipe of the engine or vehicle.

(5) Operate the engine at 2500 ± 50 rpm for gasoline-fueled engines (1200± 50 rpm for diesel) and zero load for a minimum of 30 seconds and a maximum of 6 minutes.

(6) Operate the engine at curb idle for 30 ± 5 seconds with the dynamometer off for the engine test, or the transmission in neutral (or park for automatic transmissions) for the vehicle tests.

(7) Sample the exhaust (after step 6) for an additional 30 ± 5 seconds for raw dry-basis HC in ppm C-6 (n-hexane) and raw dry-basis CO in percent. The highest value observed during this sample period shall be the value recorded.

(b) If the CVS sampling system is used, the following procedures apply:

(1) Warm-up the engine as specified in (a)(1) of this section.

(2) Precondition the engine as specified in (a)(5) of this section.

(3) With the sample selector valves in the "standby" position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(4) Start the CVS (if not already on), the sample pumps, the temperature recorder, the engine cooling fan, the heated hydrocarbon analysis recorder (diesel only) and the raw CO_2 analyzer. (The heat exchanger of the constant volume sampler, if used, diesel hydrocarbon analyzer continuous sample line, and filter (if applicable) shall be preheated to their respective operating temperatures before the test begins).

(5) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

(6) Operate the engine at the conditions specified in (a)(6) of this section.

(7) Begin HC and CO bag sampling and raw CO_2 sampling.

(8) Sample idle emissions long enough to obtain a sufficient bag sample, but in no case shorter than 60 seconds nor longer than 6 minutes. Follow the sampling and exhaust measurements requirements of Subpart D for the conducting of the idle modes of the gasoline or diesel steady-state test for the raw CO_2 measurement.

(9) As soon as possible; transfer the idle test exhaust and dilution air samples to the analytical system and process the samples according to § 86.1540 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(10) Disconnect the exhaust tube from the engine tail-pipe(s).

(11) The CVS may be turned off, if desired.

(c) If the raw exhaust sampling and analysis technique specified in Subpart D is used, the following procedures apply:

(1) Warm-up the engine as specified in (a)(1) of this section.

(2) Precondition the engine as specified in (a)(5) of this section.

(3) Operate the engine at the conditions specified in (a)(6) of this section.

(4) Follow the sampling and exhaust measurement requirements of Subpart D for conducting the idle modes. The respective mode lengths for gasoline-fueled and diesel engines apply.

(d) If the engine stalls at any time during the test run, the test is void.

§ 86.1538-83 [Reserved]

§ 86.1539-83 [Reserved]

§ 86.1540-83 Idle exhaust sample analysis.

(a) Record the idle concentrations in ppm C-6 (n-hexane) for HC and percent for CO.

(b) If the CVS sampling system is used, the analysis procedures for dilute HC, CO, and CO_2 specified in subpart N apply. Follow the raw CO_2 analysis procedure specified in Subpart D for the raw CO_2 analyzer. The HC may be recorded as ppm propane (ppmC-3) or ppm carbon (ppmC).

(c) If the continuous raw exhaust sampling technique (Subpart D) is used, the analysis procedures for HC and CO specified in Subpart D apply. The HC may be recorded as ppm propane (ppmC-3) or ppm carbon (ppmC).

§ 86.1541-83 [Reserved]

§ 86.1542-83 Information required.

(a) *General data.* The following information shall be recorded for each idle emission test:

(1) Vehicle identification number for a vehicle test.

(2) Engine identification number for an engine test.

(3) Engine family.

(4) Engine displacement.

(5) Analyzer operator(s).

(6) Vehicle (engine) operator(s).

(7) Fuel identification.

(8) Date of purchase of analytical equipment.

(9) Date of most recent analytical assembly calibration.

(10) All pertinent instrument information such as tuning, gain, serial numbers, detector number, calibration curve numbers, etc. As long as this information is traceable, it may be summarized by system number or analyzer identification numbers.

(11) *Pre-test data.*

(i) Date and time of day.

(ii) Test number.

(iii) Ambient temperature (vehicle test) or engine intake air temperature (engine test).

(iv) Vehicle mileage or engine hours as applicable.

(12) *Test data.*

(i) Curb idle speed during the test.

(ii) Idle exhaust HC concentration.

(iii) Idle exhaust CO concentration.

(b) If a CVS sampling system with bag analysis is used for the idle emission test, record the additional information specified in Subpart N as applicable. In addition, record the raw exhaust CO_2 concentration during the test.

(c) If the raw exhaust sampling and analysis system specified in Subpart D is used, record the additional information specified in Subpart D as applicable.

§ 86.1543-83 [Reserved]

§ 86.1544-83 Calculations; idle exhaust emissions.

(a) The final idle emission test results shall be reported as ppmC (equivalent carbon) for hydrocarbons and percent for carbon monoxide, both on a dry basis. The results shall be reported to the same number of significant digits as the idle standards specified in § 86.083-10 and § 86.083-11.

(b) Convert dry-basis ppmC-6 (n-hexane) to ppmC (equivalent carbon) by:

$$ppmC = (6.0)\ ppmC\text{-}6$$

(c) If a CVS sampling system is used, the following procedure shall apply:

(1) Use the procedures, as applicable, in Subpart N to determine the dilute wet-basis HC in ppmC, and CO and CO_2 in percent.

(2) Use the procedure, as applicable, in Subpart D to determine the raw dry-basis CO_2 in percent.

(3) Convert the raw dry-basis CO_2 to raw wet-basis. An assumption that the percent of water by volume in the raw sample is equal to the percent of raw dry-basis CO_2 minus 0.5 percent is acceptable. For example:

10.0% dry CO_2 − 0.5% = 9.5% water (1.00 − 0.095) (10.0% dry CO_2) = 9.05% wet CO_2

(4) Calculate the CVS dilution factor (DF) by:

$$DF = \frac{\text{Raw Wet } CO_2 - \text{Background } CO_2}{\text{Dilute Wet } CO_2 - \text{Background } CO_2}$$

(5) Convert the dilute wet-basis HC and CO to dilute dry-basis values. An assumption that the percent of water by volume in the sample bag is 2 percent is acceptable. For example:

$$\text{dilute dry HC} = (\text{dilute wet HC}) / (1.00 - 0.02)$$

(6) Calculate the raw dry-basis HC and CO values by:

raw dry HC = (DF) (dilute dry HC)
raw dry CO = (DF) (dilute dry CO)

(d) If the raw exhaust sampling and analysis system specified in Subpart D is used, the following procedure shall apply:

(1) Use the procedure, as applicable, in Subpart D to determine raw wet-basis HC and raw dry-basis CO and CO_2.

(2) Use calculations specified in Subpart D to determine raw dry-basis HC.

26. Appendix I of Part 86 is proposed to be amended as follows:

APPENDIX I—URBAN DYNAMOMETER SCHEDULES

(a) * * *
(b) * * *
(c) * * *
(d) * * *
(e) * * *
(f) EPA Engine Dynamometer Schedule for Heavy-Duty Gasoline Engines.

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE

Record (Sec.)	Percent RPM	Percent torque
0	0.0	0.0
1	0.0	0.0
2	0.0	0.0
3	0.0	0.0
4	0.0	0.0
5	0.0	0.0
6	0.0	0.0
7	0.0	0.0
8	0.0	0.0
9	0.0	0.0
10	0.0	0.0
11	0.0	0.0
12	0.0	0.0
13	0.0	0.0
14	0.0	0.0
15	0.0	0.0
16	0.0	0.0
17	0.0	0.0
18	0.0	0.0
19	0.0	0.0
20	0.0	0.0
21	0.0	0.0
22	0.0	0.0
23	0.0	0.0
24	0.0	0.0
25	−1.78	44.40
26	0.0	85.35
27	4.25	100.00
28	27.47	100.00
29	42.96	100.00
30	45.79	100.00
31	48.11	99.46
32	50.42	90.00
33	52.74	75.23
34	54.00	50.00
35	44.42	8.96
36	45.05	Motoring
37	46.00	9.99
38	37.69	Motoring
39	31.61	5.68
40	22.94	35.29
41	24.00	4.87
42	20.86	Motoring
43	12.45	Motoring
44	6.00	Motoring
45	6.52	Motoring
46	7.17	Motoring
47	2.56	Motoring
48	0.0	0.0
49	0.0	0.0
50	0.0	0.0
51	0.0	10.11
52	4.32	46.40
53	8.90	45.17
54	1.95	50.00
55	3.33	41.68
56	4.00	89.46
57	13.76	55.60
58	26.43	26.96
59	33.85	6.16
60	36.00	Motoring
61	34.45	Motoring
62	34.00	Motoring
63	35.64	Motoring
64	32.99	27.39
65	36.00	80.00
66	41.63	74.37
67	60.41	26.76
68	48.44	Motoring
69	43.86	Motoring
70	40.39	Motoring
71	38.50	4.01
72	35.05	30.00
73	40.66	16.70
74	43.64	26.45
75	45.96	Motoring
76	47.10	Motoring
77	49.29	Motoring
78	37.10	Motoring
79	36.00	Motoring
80	34.47	Motoring
81	32.15	Motoring
82	31.67	Motoring
83	28.48	13.89
84	32.38	90.00
85	36.00	90.00
86	41.69	90.00
87	45.74	90.00
88	49.95	80.00
89	49.10	80.00
90	50.59	62.97
91	45.99	34.98
92	42.76	7.23
93	35.12	Motoring
94	32.06	67.92
95	35.53	62.55
96	46.57	68.60
97	49.77	48.85
98	52.00	60.00
99	58.06	60.00
100	63.66	23.42
101	64.14	17.84
102	59.58	3.76
103	38.00	42.26
104	39.09	30.00
105	40.00	30.00
106	34.85	47.18
107	32.03	10.33
108	34.00	33.48
109	34.00	50.00
110	33.02	20.69
111	25.54	Motoring
112	15.57	Motoring
113	14.00	Motoring
114	14.47	27.64
115	18.00	4.49
116	17.13	Motoring
117	16.00	Motoring
118	10.02	Motoring
119	9.81	Motoring
120	5.88	Motoring
121	4.00	Motoring
122	4.00	Motoring
123	2.93	Motoring
124	0.62	Motoring
125	0.0	0.0
126	0.0	0.0
127	0.0	0.0
128	0.0	0.0
129	0.0	0.0
130	0.0	10.00
131	0.0	10.00
132	0.0	20.02
133	0.0	27.83
134	0.0	7.34
135	0.0	0.0
136	0.0	0.0
137	0.0	0.0
138	0.0	0.0
139	0.0	0.0
140	0.0	0.0
141	0.0	0.0
142	0.0	0.0
143	0.0	0.0
144	0.0	0.0
145	0.0	0.0
146	2.00	0.0
147	1.38	0.0
148	0.0	0.0
149	0.0	6.27
150	0.0	2.16
151	0.0	0.0
152	0.0	0.0
153	0.0	0.0
154	0.83	Motoring
155	2.00	Motoring
156	0.54	Motoring
157	0.0	0.0
158	0.0	0.0
159	0.0	0.0
160	0.0	0.0
161	0.0	0.0
162	0.0	0.0
163	0.0	0.0
164	0.0	0.0
165	0.0	0.0
166	0.0	0.0
167	0.0	22.01
168	1.23	72.29
169	6.63	80.00
170	17.29	89.29
171	22.17	90.00
172	24.00	82.70
173	24.00	31.96
174	24.00	Motoring
175	22.57	Motoring
176	22.00	Motoring

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
177	13.88	Motoring
178	10.00	Motoring
179	9.31	Motoring
180	3.99	Motoring
181	0.0	0.0
182	0.0	0.0
183	0.0	0.0
184	0.0	0.0
185	0.0	0.0
186	0.0	0.0
187	0.0	0.0
188	0.0	0.0
189	0.0	0.0
190	0.0	0.0
191	0.0	0.0
192	0.0	0.0
193	0.0	0.0
194	0.0	0.0
195	0.0	0.0
196	0.0	0.0
197	0.0	0.0
198	0.0	0.0
199	0.0	0.0
200	0.0	0.0
201	0.0	0.0
202	0.0	0.0
203	0.0	0.0
204	−2.52	6.30
205	−4.22	15.28
206	0.0	10.00
207	0.0	10.00
208	0.0	10.00
209	0.0	75.93
210	0.0	32.22
211	1.67	35.00
212	15.48	29.82
213	25.46	Motoring
214	24.22	Motoring
215	23.44	Motoring
216	12.41	80.00
217	8.94	83.61
218	7.26	84.82
219	16.70	80.00
220	24.67	63.33
221	0.24	79.81
222	0.0	8.52
223	0.0	0.0
224	0.0	0.0
225	0.0	0.0
226	0.0	0.0
227	0.0	0.0
228	0.0	0.0
229	0.0	0.0
230	0.0	0.0
231	0.0	0.0
232	0.0	0.0
233	0.0	17.59
234	0.0	19.63
235	0.0	10.00
236	0.0	10.00
237	0.0	10.00
238	0.0	3.34
239	0.0	0.0
240	0.0	0.0
241	0.0	0.0
242	0.0	0.0
243	0.0	0.0
244	0.0	0.0
245	0.0	0.0
246	0.0	0.0
247	0.0	0.0
248	0.0	0.0
249	0.0	0.0
250	0.0	0.0
251	0.0	0.0
252	0.0	0.0
253	0.0	0.0
254	0.0	0.0
255	0.0	0.0
256	0.0	0.0
257	0.0	0.0
258	0.0	0.0
259	0.0	0.0
260	0.0	0.0
261	0.0	0.0
262	0.0	0.0
263	0.0	0.0

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
264	0.0	0.0
265	0.0	0.0
266	0.0	0.0
267	0.0	0.0
268	0.0	0.0
269	0.0	0.0
270	0.0	0.0
271	0.0	0.0
272	0.0	0.0
273	0.0	0.0
274	0.0	0.0
275	0.0	0.0
276	0.0	0.0
277	0.0	0.0
278	0.0	0.0
279	0.0	0.0
280	0.0	0.0
281	0.0	4.17
282	1.15	10.00
283	2.00	10.00
284	0.22	10.00
285	0.0	0.0
286	0.0	0.0
287	0.0	0.0
288	0.0	0.0
289	0.0	0.0
290	0.0	0.0
291	0.0	0.0
292	0.0	0.0
293	0.0	0.0
294	0.0	0.0
295	0.0	0.0
296	0.0	0.0
297	0.0	0.0
298	0.0	0.0
299	0.0	0.0
300	0.0	4.07
301	0.0	10.00
302	0.0	17.22
303	0.0	20.00
304	0.0	20.37
305	2.33	31.94
306	16.22	36.48
307	24.00	24.91
308	24.00	13.34
309	19.06	10.00
310	18.00	Motoring
311	17.17	Motoring
312	9.04	Motoring
313	1.09	Motoring
314	0.0	0.0
315	0.0	0.0
316	0.0	0.0
317	0.0	0.0
318	0.0	0.0
319	0.0	0.0
320	0.0	0.0
321	0.0	0.0
322	0.0	0.0
323	0.0	0.82
324	0.37	41.08
325	2.68	90.00
326	6.00	94.99
327	11.94	100.00
328	15.63	100.00
329	41.26	90.28
330	46.26	90.00
331	44.56	67.08
332	36.00	1.12
333	27.58	50.12
334	23.52	90.00
335	24.00	90.00
336	26.29	70.00
337	30.00	65.38
338	30.00	34.47
339	30.00	10.00
340	30.00	10.00
341	30.00	10.00
342	30.18	60.00
343	40.00	58.25
344	40.67	50.00
345	41.02	50.00
346	40.00	50.00
347	41.61	50.00
348	42.00	50.00
349	46.00	50.00
350	48.22	50.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
351	59.21	58.69
352	67.18	70.00
353	71.00	70.00
354	72.00	70.00
355	72.13	68.08
356	74.89	28.94
357	68.91	Motoring
358	49.71	Motoring
359	41.84	Motoring
360	38.30	Motoring
361	35.93	Motoring
362	28.00	Motoring
363	23.48	Motoring
364	10.16	Motoring
365	4.72	Motoring
366	0.82	5.90
367	9.53	19.53
368	2.20	45.60
369	20.53	7.33
370	21.15	0.0
371	17.67	Motoring
372	13.04	Motoring
373	8.41	79.70
374	10.33	100.00
375	17.27	100.00
376	22.00	100.00
377	25.16	100.00
378	29.37	100.00
379	36.73	66.35
380	40.00	Motoring
381	23.50	Motoring
382	9.37	Motoring
383	8.00	Motoring
384	6.74	Motoring
385	2.86	Motoring
386	0.11	Motoring
387	0.0	0.0
388	0.0	0.0
389	0.0	0.0
390	0.0	0.0
391	0.0	0.0
392	0.0	0.0
393	0.0	0.0
394	0.0	0.0
395	0.0	0.0
396	0.0	0.0
397	0.0	0.0
398	0.0	0.0
399	0.0	0.0
400	0.0	0.0
401	0.0	0.0
402	0.0	0.0
403	0.0	0.0
404	0.0	0.0
405	0.0	0.0
406	0.0	0.0
407	0.0	0.0
408	0.0	0.0
409	0.0	0.0
410	0.0	0.0
411	0.0	0.0
412	0.0	0.0
413	0.0	0.0
414	0.0	0.0
415	0.0	0.0
416	0.0	0.0
417	0.0	0.0
418	0.0	0.0
419	2.27	20.00
420	2.82	14.11
421	0.0	0.0
422	0.0	0.0
423	0.0	0.0
424	0.0	0.0
425	0.0	0.0
426	0.0	0.0
427	0.0	0.0
428	0.0	0.0
429	0.0	0.0
430	0.0	0.0
431	0.26	0.78
432	16.60	31.83
433	45.32	29.78
434	43.00	10.00
435	40.69	10.00
436	35.12	10.00
437	28.18	19.70

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
438	28.26	47.45
439	30.00	30.00
440	30.00	30.00
441	30.00	30.00
442	34.54	30.00
443	36.00	30.00
444	36.43	30.00
445	43.84	30.00
446	50.00	30.00
447	50.00	24.56
448	50.00	20.00
449	50.00	Motoring
450	37.97	Motoring
451	35.30	Motoring
452	30.68	Motoring
453	27.02	Motoring
454	26.00	Motoring
455	26.00	Motoring
456	20.24	Motoring
457	14.00	Motoring
458	13.45	18.27
459	9.40	52.99
460	10.72	81.81
461	15.50	97.48
462	19.62	100.00
463	20.25	100.00
464	25.76	100.00
465	35.02	100.00
466	42.14	94.65
467	44.00	90.00
468	45.70	90.00
469	51.99	60.00
470	50.00	60.00
471	51.29	63.22
472	54.96	70.00
473	56.00	70.00
474	62.35	38.25
475	71.61	30.00
476	76.22	50.00
477	78.00	50.00
478	78.00	41.53
479	55.93	12.58
480	38.52	0.0
481	34.42	71.65
482	36.11	79.47
483	38.84	67.90
484	42.74	60.00
485	44.00	54.75
486	49.46	36.35
487	52.00	30.00
488	32.05	Motoring
489	25.69	0.0
490	24.00	0.0
491	24.00	Motoring
492	20.24	Motoring
493	10.16	68.43
494	8.00	80.58
495	10.20	80.99
496	13.54	90.00
497	18.00	94.13
498	20.28	100.00
499	22.00	100.00
500	23.77	91.15
501	28.08	90.00
502	30.00	86.01
503	32.85	80.70
504	32.86	100.00
505	33.37	100.00
506	36.00	100.00
507	51.77	100.00
508	60.57	95.72
509	64.00	70.00
510	64.91	70.00
511	75.83	70.00
512	82.00	70.00
513	85.72	51.42
514	86.17	49.14
515	88.49	35.13
516	90.00	15.99
517	91.12	26.74
518	92.00	32.85
519	93.74	30.00
520	89.29	Motoring
521	66.00	41.87
522	67.38	56.88
523	80.02	54.96
524	93.95	66.34

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
525	97.63	63.69
526	94.11	60.00
527	85.66	Motoring
528	70.00	Motoring
529	69.11	Motoring
530	66.80	Motoring
531	64.48	Motoring
532	53.00	44.98
533	52.73	49.27
534	62.00	40.00
535	62.00	43.88
536	64.18	44.55
537	53.36	4.88
538	46.28	15.79
539	46.00	19.83
540	45.65	10.00
541	45.99	10.00
542	48.05	10.00
543	44.71	3.54
544	48.82	Motoring
545	51.92	66.82
546	47.53	Motoring
547	36.31	9.23
548	17.73	55.68
549	29.43	38.22
550	36.00	37.46
551	36.00	40.00
552	34.00	40.00
553	34.00	40.00
554	34.00	36.25
555	38.26	24.68
556	43.38	61.38
557	50.78	46.12
558	52.00	19.92
559	52.32	0.0
560	52.09	3.19
561	48.00	10.00
562	48.00	10.00
563	48.00	10.00
564	30.94	19.48
565	28.00	20.00
566	28.00	20.00
567	28.00	15.81
568	28.00	10.00
569	26.53	10.00
570	26.00	10.00
571	23.71	Motoring
572	17.59	Motoring
573	11.65	Motoring
574	1.92	Motoring
575	0.0	0.0
576	0.0	0.0
577	0.0	0.0
578	0.0	0.0
579	0.0	0.0
580	0.0	0.0
581	0.0	0.0
582	0.0	0.0
583	1.26	25.19
584	6.72	47.87
585	13.67	40.56
586	16.20	80.00
587	18.52	80.00
588	25.83	75.83
589	35.15	70.00
590	38.93	77.31
591	41.78	80.00
592	40.00	10.00
593	40.00	20.18
594	40.00	52.78
595	40.00	34.82
596	40.00	30.00
597	40.00	38.33
598	40.00	30.09
599	38.30	100.00
600	40.61	100.00
601	42.00	100.00
602	42.00	100.00
603	42.00	100.00
604	42.00	100.00
605	42.00	100.00
606	42.00	97.50
607	43.19	85.93
608	43.13	85.65
609	44.00	90.00
610	44.00	90.00
611	44.00	80.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
612	44.00	80.00
613	44.70	80.00
614	46.00	74.91
615	46.00	63.34
616	46.00	60.00
617	46.00	60.00
618	44.00	10.00
619	44.00	10.00
620	43.09	10.00
621	42.00	10.00
622	42.00	10.00
623	43.85	19.20
624	50.00	90.00
625	50.00	90.00
626	50.00	90.00
627	50.00	90.00
628	50.00	90.00
629	48.26	90.00
630	48.00	89.73
631	48.37	80.00
632	49.32	80.00
633	48.00	80.00
634	48.00	80.00
635	48.00	80.00
636	48.00	70.28
637	48.00	70.00
638	48.00	70.00
639	48.00	74.44
640	48.00	61.96
641	49.52	50.00
642	50.00	50.00
643	50.00	40.00
644	50.00	44.62
645	50.78	60.00
646	52.00	49.09
647	52.00	40.00
648	52.00	40.00
649	52.04	40.89
650	54.00	90.00
651	54.00	90.00
652	54.00	85.10
653	55.29	73.53
654	56.00	70.00
655	56.00	70.00
656	56.00	60.00
657	56.00	57.23
658	56.00	50.00
659	56.00	38.17
660	56.00	30.00
661	56.00	30.00
662	54.00	39.36
663	54.00	27.72
664	54.00	20.00
665	54.00	20.00
666	54.00	20.00
667	54.00	11.49
668	54.00	0.08
669	54.00	13.31
670	54.00	30.00
671	54.96	30.00
672	57.28	30.00
673	56.41	30.00
674	57.91	30.00
675	58.22	36.60
676	60.00	90.00
677	60.00	90.00
678	60.00	95.82
679	60.00	92.60
680	60.00	90.00
681	60.00	90.00
682	60.42	90.00
683	62.74	90.00
684	65.05	90.00
685	66.00	83.16
686	66.00	71.59
687	66.00	70.00
688	66.00	70.00
689	66.00	73.14
690	66.00	80.00
691	66.00	86.28
692	66.00	90.00
693	66.00	90.00
694	68.20	100.00
695	70.00	100.00
696	70.00	100.00
697	70.00	100.00
698	74.38	100.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
699	76.00	100.00
700	72.09	100.00
701	73.60	100.00
702	72.00	100.00
703	72.00	100.00
704	72.00	100.00
705	72.00	100.00
706	72.00	100.00
707	72.29	100.00
708	73.39	100.00
709	72.92	100.00
710	74.00	100.00
711	74.00	100.00
712	77.73	100.00
713	78.00	100.00
714	77.50	100.00
715	76.00	100.00
716	76.00	100.00
717	76.00	100.00
718	72.49	100.00
719	71.79	100.00
720	67.16	100.00
721	72.70	100.00
722	75.02	100.00
723	73.34	100.00
724	73.64	91.78
725	74.00	31.21
726	78.27	28.63
727	80.00	17.05
728	80.00	5.48
729	80.00	Motoring
730	80.00	Motoring
731	80.00	63.93
732	84.00	80.00
733	85.43	82.39
734	87.62	93.96
735	84.00	100.00
736	84.00	100.00
737	84.00	91.32
738	86.00	100.00
739	86.73	100.00
740	90.00	96.59
741	91.99	90.00
742	94.00	90.00
743	95.63	81.87
744	96.00	89.70
745	100.00	98.72
746	100.57	78.60
747	102.88	50.00
748	104.00	73.99
749	104.00	90.00
750	104.00	25.98
751	103.71	20.00
752	99.54	20.00
753	98.00	20.00
754	99.09	25.44
755	98.60	65.08
756	103.15	80.00
757	100.03	80.00
758	102.35	80.00
759	104.00	73.38
760	104.00	55.11
761	101.42	30.62
762	98.39	11.97
763	57.65	Motoring
764	58.00	Motoring
765	57.45	Motoring
766	56.00	Motoring
767	56.00	Motoring
768	56.00	27.39
769	56.00	40.00
770	56.00	50.00
771	56.00	45.60
772	56.00	33.77
773	56.00	40.00
774	60.15	5.40
775	62.00	Motoring
776	62.00	Motoring
777	62.00	41.64
778	62.00	59.65
779	62.00	75.21
780	62.00	76.36
781	62.00	80.00
782	62.00	80.00
783	62.00	80.00
784	62.00	80.00
785	61.15	80.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
786	60.00	80.00
787	60.00	87.38
788	60.00	90.00
789	60.00	90.00
790	60.00	90.00
791	60.00	90.00
792	60.00	90.00
793	60.00	83.17
794	60.00	80.00
795	60.00	89.97
796	62.31	90.00
797	64.00	85.88
798	64.00	80.00
799	64.00	80.00
800	64.00	80.00
801	64.00	80.00
802	66.00	70.00
803	66.51	70.00
804	68.00	65.87
805	68.00	60.00
806	68.00	60.00
807	73.31	86.55
808	74.00	90.00
809	74.00	90.00
810	73.29	90.00
811	72.00	84.86
812	73.34	73.29
813	74.00	70.00
814	72.03	70.00
815	71.71	50.00
816	70.00	50.00
817	70.00	50.00
818	68.77	56.15
819	68.00	60.00
820	68.00	60.00
821	68.00	58.28
822	68.00	40.00
823	68.00	48.01
824	68.00	60.00
825	68.00	60.00
826	68.00	60.00
827	68.00	60.00
828	68.00	61.87
829	68.00	70.00
830	69.00	70.00
831	70.00	70.00
832	70.00	70.00
833	70.00	70.00
834	70.00	70.00
835	70.00	70.00
836	70.00	70.00
837	73.61	70.00
838	76.00	62.41
839	76.00	60.00
840	76.00	100.00
841	76.92	100.00
842	80.78	100.00
843	82.00	100.00
844	83.40	100.00
845	84.00	100.00
846	83.97	90.00
847	82.35	90.00
848	85.33	93.31
849	89.95	100.00
850	88.13	100.00
851	89.21	100.00
852	95.76	100.00
853	100.23	100.00
854	102.00	100.00
855	104.59	100.00
856	112.71	100.00
857	113.01	100.00
858	112.00	100.00
859	104.00	Motoring
860	103.56	Motoring
861	102.75	Motoring
862	102.94	Motoring
863	99.24	Motoring
864	94.61	Motoring
865	93.99	Motoring
866	92.32	Motoring
867	93.36	Motoring
868	92.00	Motoring
869	90.73	Motoring
870	88.42	Motoring
871	84.21	Motoring
872	82.00	10.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
873	82.00	7.38
874	82.00	Motoring
875	82.00	Motoring
876	68.79	48.69
877	64.00	70.00
878	64.00	70.00
879	58.66	67.95
880	37.27	60.00
881	34.96	60.00
882	32.65	73.54
883	30.33	80.00
884	28.02	80.00
885	25.70	50.00
886	23.39	37.76
887	21.07	10.00
888	18.76	10.00
889	14.89	Motoring
890	12.13	Motoring
891	50.45	Motoring
892	0.0	0.0
893	0.0	0.0
894	0.0	0.0
895	0.0	0.0
896	0.0	0.0
897	0.0	0.0
898	0.0	0.0
899	0.0	0.0
900	0.0	0.0
901	0.0	0.0
902	0.0	0.0
903	0.0	0.0
904	0.0	0.0
905	0.0	0.0
906	0.0	0.0
907	0.0	0.0
908	0.0	0.0
909	0.0	0.0
910	0.0	0.0
911	0.0	0.0
912	0.0	0.0
913	0.0	0.0
914	0.0	0.0
915	0.0	0.0
916	0.0	0.0
917	0.0	0.0
918	0.0	0.0
919	0.0	0.0
920	−1.78	44.40
921	0.0	85.35
922	4.25	100.00
923	27.47	100.00
924	42.96	100.00
925	45.79	100.00
926	48.11	99.46
927	50.42	90.00
928	52.74	75.23
929	54.00	50.00
930	44.42	8.96
931	45.05	Motoring
932	46.00	9.99
933	37.69	Motoring
934	31.61	5.68
935	22.94	35.29
936	24.00	4.87
937	20.86	Motoring
938	12.45	Motoring
939	6.00	Motoring
940	6.52	Motoring
941	7.17	Motoring
942	2.56	Motoring
943	0.0	0.0
944	0.0	0.0
945	0.0	0.0
946	0.0	10.11
947	4.32	46.40
948	8.90	45.17
949	1.95	50.00
950	3.33	41.68
951	4.00	89.46
952	13.76	55.60
953	26.43	26.96
954	33.85	6.16
955	36.00	Motoring
956	34.45	Motoring
957	34.00	Motoring
958	35.64	Motoring
959	32.99	27.39

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
960	36.00	80.00
961	41.63	74.37
962	60.41	26.76
963	48.44	Motoring
964	43.86	Motoring
965	40.39	Motoring
966	38.50	4.01
967	35.05	30.00
968	40.66	16.70
969	43.64	26.45
970	45.96	Motoring
971	47.10	Motoring
972	49.20	Motoring
973	37.10	Motoring
974	36.00	Motoring
975	34.47	Motoring
976	32.15	Motoring
977	31.67	Motoring
978	28.48	13.89
979	32.38	90.00
980	36.00	90.00
981	41.69	90.00
982	45.74	90.00
983	49.95	80.00
984	49.10	80.00
985	50.59	62.97
986	45.99	34.98
987	42.76	7.23
988	35.12	Motoring
989	32.06	67.92
990	35.53	62.55
991	46.57	68.60
992	49.77	48.85
993	52.00	60.00
994	58.06	60.00
995	63.66	23.42
996	64.14	17.84
997	59.58	3.76
998	38.00	42.26
999	39.09	30.00
1000	40.00	30.00
1001	34.85	47.18
1002	32.03	10.33
1003	34.00	33.48
1004	34.00	50.00
1005	33.02	20.69
1006	25.54	Motoring
1007	15.57	Motoring
1008	14.00	Motoring
1009	14.47	27.64
1010	18.00	4.49
1011	17.13	Motoring
1012	16.00	Motoring
1013	10.02	Motoring
1014	9.81	Motoring
1015	5.88	Motoring
1016	4.00	Motoring
1017	4.00	Motoring
1018	2.93	Motoring
1019	0.62	Motoring
1020	0.0	0.0
1021	0.0	0.0
1022	0.0	0.0
1023	0.0	0.0
1024	0.0	0.0
1025	0.0	10.00
1026	0.0	10.00
1027	0.0	29.02
1028	0.0	27.83
1029	0.0	7.34
1030	0.0	0.0
1031	0.0	0.0
1032	0.0	0.0
1033	0.0	0.0
1034	0.0	0.0
1035	0.0	0.0
1036	0.0	0.0
1037	0.0	0.0
1038	0.0	0.0
1039	0.0	0.0
1040	0.0	0.0
1041	2.00	0.0
1042	1.38	0.0
1043	0.00	0.0
1044	0.00	6.27
1045	0.00	2.16
1046	0.00	0.0

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
1047	0.00	0.0
1048	0.00	0.0
1049	0.83	Motoring
1050	2.00	Motoring
1051	0.54	Motoring
1052	0.0	0.0
1053	0.0	0.0
1054	0.0	0.0
1055	0.0	0.0
1056	0.0	0.0
1057	0.0	0.0
1058	0.0	0.0
1059	0.0	0.0
1060	0.0	0.0
1061	0.0	0.0
1062	0.0	22.01
1063	1.23	72.29
1064	6.63	80.00
1065	17.20	89.29
1066	22.17	90.00
1067	24.00	82.70
1068	24.00	31.96
1069	24.00	Motoring
1070	22.57	Motoring
1071	22.00	Motoring
1072	13.88	Motoring
1073	10.00	Motoring
1074	9.31	Motoring
1075	3.99	Motoring
1076	0.0	0.0
1077	0.0	0.0
1078	0.0	0.0
1079	0.0	0.0
1080	0.0	0.0
1081	0.0	0.0
1082	0.0	0.0
1083	0.0	0.0
1084	0.0	0.0
1085	0.0	0.0
1086	0.0	0.0
1087	0.0	0.0
1088	0.0	0.0
1089	0.0	0.0
1090	0.0	0.0
1091	0.0	0.0
1092	0.0	0.0
1093	0.0	0.0
1094	0.0	0.0
1095	0.0	0.0
1096	0.0	0.0
1097	0.0	0.0
1098	0.0	0.0
1099	−2.52	6.30
1100	−4.22	15.28
1101	0.0	10.00
1102	0.0	10.00
1103	0.0	10.00
1104	0.0	75.93
1105	0.0	32.22
1106	1.67	35.00
1107	15.48	29.82
1108	25.46	Motoring
1109	24.22	Motoring
1110	23.44	Motoring
1111	12.41	80.00
1112	8.94	83.61
1113	7.26	84.82
1114	16.70	80.00
1115	24.67	63.33
1116	0.24	79.81
1117	0.0	8.52
1118	0.0	0.0
1119	0.0	0.0
1120	0.0	0.0
1121	0.0	0.0
1122	0.0	0.0
1123	0.0	0.0
1124	0.0	0.0
1125	0.0	0.0
1126	0.0	0.0
1127	0.0	0.0
1128	0.0	17.59
1129	0.0	19.63
1130	0.0	10.00
1131	0.0	10.00
1132	0.0	10.00
1133	0.0	3.34

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SEQUENCE—Continued

Record (Sec.)	Percent RPM	Percent torque
1134	0.0	0.0
1135	0.0	0.0
1136	0.0	0.0
1137	0.0	0.0
1138	0.0	0.0
1139	0.0	0.0
1140	0.0	0.0
1141	0.0	0.0
1142	0.0	0.0
1143	0.0	0.0
1144	0.0	0.0
1145	0.0	0.0
1146	0.0	0.0
1147	0.0	0.0
1148	0.0	0.0
1149	0.0	0.0
1150	0.0	0.0
1151	0.0	0.0
1152	0.0	0.0
1153	0.0	0.0
1154	0.0	0.0
1155	0.0	0.0
1156	0.0	0.0
1157	0.0	0.0
1158	0.0	0.0
1159	0.0	0.0
1160	0.0	0.0
1161	0.0	0.0
1162	0.0	0.0
1163	0.0	0.0
1164	0.0	0.0
1165	0.0	0.0
1166	0.0	0.0
1167	0.0	0.0

(g) EPA Engine Dynamometer Schedule for Heavy-Duty Diesel Engines.

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE

Record (Sec.)	Percent RPM	Percent torque
0	0.0	0.0
1	0.0	0.0
2	0.0	0.0
3	0.0	0.0
4	0.0	0.0
5	0.0	0.0
6	0.0	0.0
7	0.0	0.0
8	0.0	0.0
9	0.0	0.0
10	0.0	0.0
11	0.0	0.0
12	0.0	0.0
13	0.0	0.0
14	0.0	0.0
15	0.0	0.0
16	0.0	0.0
17	0.0	0.0
18	0.0	0.0
19	0.0	0.0
20	0.0	0.0
21	0.0	0.0
22	0.0	0.0
23	0.0	0.0
24	0.0	0.0
25	0.0	3.07
26	0.0	47.69
27	3.11	59.41
28	9.09	84.54
29	15.62	80.00
30	33.49	80.00
31	37.93	79.29
32	31.20	38.25
33	21.99	26.67
34	30.00	15.10
35	22.23	16.47
36	19.61	28.05
37	20.00	20.38
38	18.33	Motoring
39	6.55	Motoring
40	15.82	Motoring
41	23.63	Motoring

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
42	17.51	Motoring
43	14.19	62.52
44	16.64	69.36
45	27.77	60.00
46	37.03	63.79
47	47.36	75.36
48	54.77	80.00
49	57.70	80.00
50	54.03	79.92
51	58.00	65.03
52	58.65	43.23
53	62.88	50.00
54	69.83	50.00
55	72.00	42.05
56	75.81	40.00
57	84.22	42.20
58	83.86	41.28
59	80.55	Motoring
60	80.51	Motoring
61	78.00	Motoring
62	79.79	Motoring
63	80.33	30.54
64	85.58	42.12
65	81.78	50.00
66	78.00	50.00
67	80.74	43.16
68	92.10	73.65
69	88.01	Motoring
70	84.00	Motoring
71	84.00	Motoring
72	81.17	Motoring
73	70.46	Motoring
74	66.00	13.57
75	62.23	29.43
76	64.00	20.00
77	63.48	17.42
78	60.34	10.00
79	56.85	10.00
80	56.00	Motoring
81	52.45	Motoring
82	39.91	10.00
83	36.38	10.00
84	30.00	10.00
85	27.93	10.00
86	26.00	16.74
87	27.66	3.36
88	28.00	Motoring
89	27.41	Motoring
90	20.96	Motoring
91	12.15	Motoring
92	3.81	Motoring
93	0.0	0.0
94	0.0	0.0
95	0.0	0.91
96	0.0	7.52
97	0.0	0.0
98	0.0	0.0
99	0.0	0.0
100	0.0	0.0
101	0.0	0.0
102	0.0	0.0
103	0.0	0.0
104	0.0	0.0
105	0.0	0.0
106	0.0	0.0
107	0.0	0.0
108	0.0	0.0
109	0.0	0.0
110	0.0	0.0
111	0.0	0.0
112	0.0	0.0
113	0.0	0.0
114	0.0	0.0
115	0.0	0.0
116	0.0	0.0
117	0.0	0.0
118	0.0	0.0
119	0.0	0.0
120	0.0	0.0
121	0.0	0.0
122	0.0	0.0
123	0.0	0.0
124	0.0	0.0
125	0.0	0.0
126	0.0	0.0
127	0.0	0.0
128	0.0	0.0

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
129	1.77	Motoring
130	1.60	Motoring
131	0.0	0.0
132	0.0	0.0
133	2.14	9.28
134	3.08	0.0
135	0.0	0.0
136	0.0	0.0
137	0.0	0.0
138	0.0	0.0
139	0.0	0.0
140	0.0	0.0
141	0.0	0.0
142	0.0	0.0
143	0.0	0.0
144	0.0	0.0
145	0.0	0.0
146	0.0	0.0
147	0.0	5.51
148	0.0	11.34
149	0.0	0.0
150	0.0	0.0
151	0.0	0.0
152	0.0	0.0
153	0.0	0.0
154	0.0	0.0
155	0.0	0.0
156	0.0	0.0
157	0.0	0.0
158	0.0	0.21
159	0.0	30.00
160	0.0	26.78
161	0.0	20.00
162	0.0	20.00
163	0.0	4.12
164	0.0	0.0
165	0.0	0.0
166	0.0	0.0
167	0.0	0.0
168	0.0	0.0
169	0.0	0.0
170	0.0	0.0
171	0.0	0.0
172	0.0	0.0
173	0.0	0.0
174	0.0	0.0
175	0.0	0.0
176	0.0	0.0
177	0.0	0.0
178	0.0	0.0
179	0.0	0.0
180	0.0	0.0
181	0.0	0.0
182	0.0	0.0
183	0.0	0.0
184	0.0	20.00
185	0.0	20.00
186	0.0	11.73
187	0.0	0.0
188	0.0	0.0
189	0.0	0.0
190	0.0	0.0
191	0.0	0.0
192	0.0	0.0
193	0.0	0.0
194	0.0	0.0
195	0.0	0.0
196	0.0	0.0
197	0.0	0.0
198	0.0	0.0
199	0.0	0.0
200	0.0	0.0
201	0.0	0.0
202	0.0	0.0
203	0.0	0.0
204	0.0	0.0
205	0.0	0.0
206	0.0	0.0
207	0.0	0.0
208	0.0	0.0
209	0.0	0.0
210	0.0	0.0
211	0.0	0.0
212	0.0	0.0
213	0.0	0.0
214	0.0	73.41
215	0.0	90.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
216	31.30	81.30
217	41.15	90.00
218	44.00	90.00
219	46.41	90.00
220	51.04	82.41
221	66.66	80.00
222	75.03	90.00
223	89.85	90.00
224	96.78	93.88
225	96.91	50.94
226	94.60	17.02
227	99.16	28.60
228	100.00	39.83
229	100.00	30.00
230	100.00	26.69
231	100.98	20.00
232	100.71	20.00
233	100.00	36.06
234	96.16	40.00
235	95.77	30.00
236	94.55	32.75
237	96.86	35.68
238	99.18	30.00
239	100.00	44.93
240	101.81	50.00
241	86.54	Motoring
242	63.56	Motoring
243	56.00	Motoring
244	46.00	Motoring
245	41.86	45.18
246	38.31	78.47
247	35.98	80.00
248	31.03	80.00
249	25.36	80.00
250	23.05	60.97
251	18.20	27.34
252	12.84	43.71
253	10.10	68.95
254	3.79	68.95
255	1.48	44.28
256	0.0	0.0
257	0.0	0.0
258	0.0	0.0
259	0.0	0.0
260	0.0	0.0
261	0.0	0.0
262	0.0	0.0
263	0.0	24.97
264	0.0	17.16
265	0.0	6.20
266	0.0	10.00
267	0.0	10.00
268	0.0	0.0
269	0.0	0.0
270	0.0	0.0
271	0.0	0.0
272	0.0	0.0
273	0.0	0.0
274	0.0	0.0
275	0.0	0.0
276	0.0	0.0
277	0.0	0.0
278	0.0	0.0
279	0.0	0.0
280	0.0	0.0
281	0.0	0.0
282	0.0	0.0
283	0.0	0.0
284	0.0	0.0
285	0.0	0.0
286	0.0	0.0
287	0.0	0.0
288	0.0	0.0
289	0.0	0.0
290	0.0	0.0
291	0.0	0.0
292	0.0	0.0
293	0.0	0.0
294	0.0	0.0
295	0.0	0.0
296	0.0	0.0
297	0.0	0.0
298	0.0	0.0
299	0.0	0.0
300	0.0	0.0
301	0.0	0.0
302	0.0	0.0

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
303	0.0	0.0
304	0.0	0.0
305	0.0	0.0
306	0.0	0.0
307	0.0	0.0
308	0.0	0.0
309	0.0	0.0
310	0.0	0.0
311	0.0	0.0
312	0.0	0.0
313	0.0	0.0
314	0.0	0.0
315	0.0	0.0
316	0.0	0.0
317	0.0	0.0
318	0.0	0.0
319	0.0	0.0
320	0.0	0.0
321	0.0	15.55
322	0.0	20.00
323	24.18	19.08
324	23.00	10.00
325	11.56	1.86
326	6.87	Motoring
327	6.00	Motoring
328	0.72	Motoring
329	0.0	0.0
330	0.0	0.0
331	0.0	0.0
332	0.0	0.0
333	0.0	0.0
334	0.0	0.0
335	0.0	0.0
336	0.0	0.0
337	0.0	0.0
338	0.0	0.0
339	0.0	0.0
340	0.0	0.0
341	0.0	0.0
342	0.0	0.0
343	0.0	0.0
344	0.0	0.0
345	0.0	0.0
346	0.0	0.0
347	0.0	0.0
348	0.0	0.0
349	0.0	0.0
350	0.0	0.0
351	0.0	0.0
352	0.0	0.0
353	0.0	0.0
354	0.0	0.0
355	0.0	0.0
356	0.0	0.0
357	0.0	0.0
358	0.0	0.0
359	0.0	0.0
360	0.0	0.0
361	0.0	0.0
362	0.0	0.0
363	0.0	0.0
364	0.0	0.0
365	0.0	0.0
366	0.0	0.0
367	0.0	0.0
368	0.0	0.0
369	0.0	0.0
370	0.0	0.0
371	0.0	0.0
372	0.0	0.0
373	0.0	0.0
374	0.0	0.0
375	0.0	0.0
376	0.0	0.0
377	0.0	29.59
378	−1.50	87.46
379	8.88	100.00
380	46.04	100.00
381	76.89	100.00
382	80.00	100.00
383	82.14	94.64
384	85.39	83.07
385	87.70	88.51
386	92.00	79.83
387	92.00	61.66
388	94.58	66.77
389	102.88	60.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
390	106.00	72.76
391	109.18	8.43
392	111.91	Motoring
393	82.00	Motoring
394	79.33	Motoring
395	71.15	Motoring
396	68.84	Motoring
397	78.35	49.17
398	82.00	70.00
399	80.65	69.46
400	92.85	60.00
401	97.48	60.00
402	98.95	60.00
403	100.74	60.00
404	103.68	43.17
405	104.00	10.04
406	80.62	20.00
407	83.37	20.00
408	81.06	15.29
409	80.00	10.00
410	76.86	Motoring
411	74.11	Motoring
412	71.60	Motoring
413	70.58	Motoring
414	78.00	Motoring
415	80.29	1.45
416	80.54	17.30
417	78.23	11.13
418	78.45	19.55
419	84.36	24.16
420	72.16	80.00
421	79.10	74.83
422	90.09	16.04
423	74.04	Motoring
424	68.02	Motoring
425	68.53	Motoring
426	59.39	Motoring
427	63.54	Motoring
428	70.00	2.38
429	73.10	17.76
430	72.13	Motoring
431	67.27	Motoring
432	36.03	Motoring
433	20.75	Motoring
434	11.49	Motoring
435	−2.09	0.0
436	−0.73	0.0
437	8.57	60.00
438	30.55	61.93
439	67.10	63.00
440	86.03	39.85
441	89.33	30.00
442	91.64	30.00
443	97.88	10.40
444	97.73	1.37
445	96.00	10.00
446	96.00	0.96
447	96.00	Motoring
448	85.27	28.34
449	87.54	30.76
450	86.16	29.18
451	88.00	20.00
452	87.21	20.00
453	86.00	20.00
454	87.42	20.00
455	88.00	11.32
456	77.84	Motoring
457	72.00	Motoring
458	71.32	Motoring
459	70.00	0.04
460	70.00	Motoring
461	74.88	Motoring
462	74.06	Motoring
463	67.74	Motoring
464	66.00	Motoring
465	64.23	Motoring
466	62.00	Motoring
467	55.94	Motoring
468	54.00	Motoring
469	66.43	Motoring
470	75.21	70.00
471	86.00	54.53
472	86.00	24.56
473	88.81	Motoring
474	90.00	Motoring
475	105.48	Motoring
476	74.00	Motoring

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
477	73.34	Motoring
478	71.02	10.00
479	76.46	29.38
480	81.61	40.00
481	78.16	30.39
482	74.13	20.40
483	90.00	0.0
484	90.87	0.0
485	92.00	Motoring
486	93.50	Motoring
487	94.00	Motoring
488	94.13	Motoring
489	88.96	Motoring
490	63.25	Motoring
491	62.00	Motoring
492	49.54	45.37
493	52.49	86.99
494	64.00	90.00
495	64.99	90.00
496	71.93	93.22
497	78.87	95.21
498	82.00	83.64
499	86.76	80.00
500	93.71	80.00
501	94.87	80.00
502	103.60	80.00
503	101.23	41.89
504	95.48	24.85
505	98.00	50.00
506	99.79	50.00
507	106.21	46.83
508	110.84	Motoring
509	98.55	Motoring
510	70.95	Motoring
511	67.27	Motoring
512	60.96	Motoring
513	48.03	Motoring
514	52.31	Motoring
515	54.00	Motoring
516	65.27	Motoring
517	78.00	Motoring
518	57.61	Motoring
519	42.58	Motoring
520	38.81	Motoring
521	22.37	Motoring
522	3.52	Motoring
523	0.0	0.0
524	−1.46	36.39
525	−0.23	5.75
526	0.0	0.0
527	0.0	0.0
528	0.0	0.0
529	0.0	0.0
530	0.0	0.0
531	0.0	0.0
532	0.0	0.0
533	0.0	0.0
534	0.0	0.0
535	0.0	0.0
536	0.0	0.0
537	0.0	0.0
538	0.0	0.0
539	0.0	0.0
540	0.0	0.0
541	0.0	0.0
542	0.0	0.0
543	0.0	0.0
544	0.0	Motoring
545	0.0	0.0
546	−0.75	0.0
547	−0.56	0.0
548	4.00	Motoring
549	0.68	Motoring
550	0.0	0.0
551	0.0	0.0
552	0.0	2.60
553	0.0	20.00
554	0.0	20.00
555	0.0	7.96
556	0.0	0.0
557	0.0	0.0
558	0.0	78.53
559	1.85	60.00
560	11.10	63.88
561	16.00	70.00
562	30.05	70.00
563	42.88	70.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
564	56.10	70.00
565	63.39	66.52
566	70.66	59.94
567	72.98	80.00
568	77.87	86.46
569	88.03	90.00
570	90.00	90.00
571	92.23	100.00
572	94.00	100.00
573	94.86	100.00
574	96.00	100.00
575	97.49	100.00
576	108.84	100.00
577	110.00	83.92
578	104.77	Motoring
579	87.50	Motoring
580	90.00	0.0
581	91.38	Motoring
582	81.84	Motoring
583	65.99	Motoring
584	63.68	Motoring
585	60.73	Motoring
586	57.05	Motoring
587	53.47	Motoring
588	50.42	Motoring
589	44.31	Motoring
590	37.58	37.91
591	33.48	20.00
592	31.16	20.00
593	28.85	20.00
594	22.13	20.00
595	9.31	Motoring
596	0.0	0.0
597	0.0	0.0
598	0.0	0.0
599	0.0	0.0
600	0.0	0.0
601	0.0	0.0
602	0.0	0.0
603	0.0	0.0
604	0.0	0.0
605	0.0	0.0
606	2.52	6.30
607	10.30	17.87
608	13.89	20.00
609	20.20	20.00
610	24.07	22.59
611	33.33	17.50
612	40.30	Motoring
613	47.85	Motoring
614	66.00	7.78
615	68.00	10.93
616	67.59	32.04
617	66.00	40.00
618	67.04	40.00
619	68.00	40.00
620	68.00	48.33
621	75.93	99.53
622	78.00	100.00
623	78.00	100.00
624	77.07	100.00
625	76.00	100.00
626	76.00	100.00
627	76.00	100.00
628	75.63	100.00
629	73.00	97.50
630	76.81	90.00
631	80.26	90.00
632	83.44	90.00
633	84.00	98.79
634	84.00	100.00
635	83.61	100.00
636	82.00	100.00
637	83.02	94.91
638	86.67	90.00
639	89.65	90.00
640	90.00	99.81
641	89.45	100.00
642	86.00	100.00
643	86.00	95.47
644	87.22	90.00
645	88.00	90.00
646	88.00	80.74
647	88.00	79.17
648	88.00	77.21
649	88.00	100.00
650	88.00	94.45

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
651	88.00	90.00
652	88.00	90.00
653	90.00	90.00
654	89.63	90.00
655	88.68	90.00
656	90.00	90.00
657	90.00	90.00
658	91.63	81.86
659	92.00	80.00
660	90.00	81.29
661	89.43	92.86
662	87.11	100.00
663	86.00	100.00
664	86.00	100.00
665	89.66	100.00
666	90.00	99.27
667	90.46	90.00
668	92.78	90.00
669	95.09	90.00
670	100.22	82.97
671	102.00	80.00
672	102.00	70.18
673	102.00	80.00
674	97.34	50.07
675	87.02	Motoring
676	86.00	Motoring
677	73.12	22.19
678	75.77	39.62
679	75.76	48.80
680	75.11	37.23
681	78.00	34.34
682	80.37	40.00
683	77.51	47.49
684	81.44	50.00
685	82.13	39.36
686	84.00	27.79
687	84.00	16.21
688	84.00	15.36
689	85.39	26.93
690	86.00	30.00
691	86.00	30.08
692	85.67	40.00
693	84.65	40.00
694	86.00	35.20
695	87.28	30.00
696	88.00	22.05
697	86.09	Motoring
698	83.78	Motoring
699	81.47	Motoring
700	81.70	Motoring
701	85.16	Motoring
702	84.52	Motoring
703	82.21	Motoring
704	79.89	Motoring
705	77.58	Motoring
706	76.00	6.31
707	79.16	0.0
708	75.16	27.36
709	72.00	40.00
710	72.00	40.00
711	74.00	38.44
712	74.00	30.00
713	74.00	30.00
714	74.00	36.28
715	72.43	47.86
716	68.23	59.43
717	73.80	50.00
718	72.52	50.00
719	74.00	45.85
720	72.85	57.18
721	76.38	62.70
722	81.55	60.00
723	80.18	60.00
724	83.00	60.00
725	83.44	56.40
726	86.00	50.00
727	87.35	50.00
728	86.34	50.00
729	86.00	40.11
730	88.29	61.47
731	88.78	63.92
732	86.92	50.00
733	86.76	50.00
734	87.55	42.24
735	88.00	49.34
736	86.00	50.91
737	86.00	67.45

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
738	86.00	81.88
739	87.13	70.00
740	89.44	77.21
741	91.76	88.78
742	90.07	89.65
743	92.00	80.00
744	92.70	80.00
745	94.00	80.00
746	94.00	80.00
747	94.00	80.00
748	94.00	80.00
749	94.00	81.37
750	94.59	87.05
751	96.00	57.40
752	96.00	42.19
753	96.00	42.33
754	96.00	40.00
755	96.00	38.37
756	96.00	12.83
757	96.00	Motoring
758	96.00	Motoring
759	96.00	Motoring
760	97.74	7.37
761	100.05	19.74
762	102.00	11.83
763	102.00	26.81
764	103.00	49.96
765	104.00	60.00
766	102.37	60.00
767	103.94	60.00
768	104.00	40.00
769	104.00	25.75
770	103.12	Motoring
771	100.80	Motoring
772	100.00	Motoring
773	101.83	44.88
774	102.00	36.40
775	102.00	Motoring
776	102.00	Motoring
777	100.91	Motoring
778	101.40	Motoring
779	100.28	Motoring
780	97.97	Motoring
781	96.00	Motoring
782	96.00	10.00
783	96.00	0.23
784	96.00	Motoring
785	96.00	Motoring
786	94.08	Motoring
787	78.00	Motoring
788	77.45	Motoring
789	71.67	28.96
790	67.18	80.00
791	66.50	87.48
792	71.43	90.00
793	74.13	90.00
794	75.56	92.20
795	74.75	100.00
796	77.07	94.65
797	79.38	83.08
798	80.00	71.51
799	80.01	69.93
800	82.33	58.36
801	84.00	50.00
802	84.00	59.58
803	84.00	76.36
804	84.00	80.00
805	84.00	70.49
806	82.00	80.00
807	81.47	82.66
808	80.00	90.00
809	77.68	90.00
810	74.52	75.24
811	77.58	78.96
812	81.89	80.00
813	80.42	80.00
814	82.00	83.68
815	83.05	79.50
816	84.00	70.00
817	84.00	61.60
818	84.00	50.03
819	86.00	60.00
820	86.00	60.00
821	86.00	69.39
822	83.51	73.73
823	88.43	70.00
824	88.00	70.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
825	94.00	70.99
826	94.51	80.00
827	95.17	80.00
828	95.14	80.00
829	94.54	80.00
830	94.00	80.00
831	94.00	77.89
832	94.00	31.99
833	94.00	43.57
834	94.00	60.28
835	94.00	63.29
836	94.00	76.57
837	94.00	89.86
838	94.29	90.00
839	97.80	87.00
840	102.91	80.00
841	104.00	73.85
842	104.00	62.28
843	104.00	69.29
844	106.00	70.00
845	106.00	62.70
846	106.00	40.00
847	104.88	40.00
848	104.00	32.85
849	104.00	30.00
850	104.00	0.30
851	103.63	11.87
852	100.62	13.12
853	98.00	5.01
854	96.68	10.00
855	96.00	Motoring
856	96.00	Motoring
857	96.00	Motoring
858	95.43	Motoring
859	94.00	Motoring
860	94.00	Motoring
861	95.52	5.18
862	97.83	Motoring
863	98.00	Motoring
864	98.00	Motoring
865	97.22	Motoring
866	96.00	6.35
867	96.00	12.98
868	96.00	10.00
869	95.93	10.00
870	92.00	10.00
871	92.00	10.00
872	92.98	14.89
873	94.00	13.54
874	90.79	42.12
875	88.08	40.40
876	86.23	30.00
877	88.00	32.75
878	87.14	44.32
879	84.82	50.00
880	82.51	50.00
881	82.00	50.00
882	82.12	40.00
883	83.13	35.64
884	80.00	20.00
885	84.26	51.95
886	86.62	66.21
887	84.31	60.00
888	81.99	9.96
889	79.35	1.61
890	75.36	19.56
891	73.05	40.00
892	70.73	8.35
893	68.42	Motoring
894	47.15	8.95
895	35.79	10.00
896	32.95	7.38
897	29.16	Motoring
898	16.47	Motoring
899	2.13	Motoring
900	0.0	0.0
901	0.0	0.0
902	0.0	0.0
903	0.0	0.0
904	0.0	0.0
905	0.0	0.0
906	0.0	0.0
907	0.0	0.0
908	0.0	0.0
909	0.0	0.0
910	0.0	0.0
911	0.0	0.0

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
912	0.0	0.0
913	0.0	0.0
914	0.0	0.0
915	0.0	0.0
916	0.0	0.0
917	0.0	0.0
918	0.0	0.0
919	0.0	0.0
920	0.0	0.0
921	0.0	0.0
922	0.0	0.0
923	0.0	0.0
924	0.0	0.0
925	0.0	0.0
926	0.0	0.0
927	0.0	3.67
928	0.0	47.69
929	3.11	59.41
930	9.09	84.54
931	15.62	80.00
932	33.49	80.00
933	37.93	79.29
934	31.20	38.25
935	21.99	26.67
936	30.00	15.10
937	22.23	16.47
938	19.61	28.05
939	20.00	20.38
940	18.33	Motoring
941	6.55	Motoring
942	15.82	Motoring
943	23.63	Motoring
944	17.51	Motoring
945	14.19	62.52
946	16.64	69.36
947	27.77	60.00
948	37.03	63.79
949	47.36	75.36
950	54.77	80.00
951	57.70	80.00
952	54.03	79.92
953	58.00	65.03
954	58.65	43.23
955	62.88	50.00
956	69.83	50.00
957	72.00	42.05
958	75.81	40.00
959	84.22	42.20
960	83.86	41.28
961	80.55	Motoring
962	80.51	Motoring
963	78.00	Motoring
964	79.79	Motoring
965	80.33	30.54
966	85.58	42.12
967	81.78	50.00
968	78.00	50.00
969	80.74	43.16
970	92.10	73.65
971	88.01	Motoring
972	84.00	Motoring
973	84.00	Motoring
974	81.17	Motoring
975	70.46	Motoring
976	66.00	13.57
977	62.23	29.43
978	64.00	20.00
979	63.48	17.42
980	60.34	10.00
981	56.85	10.00
982	56.00	Motoring
983	52.45	Motoring
984	39.91	10.00
985	36.38	10.00
986	30.00	10.00
987	27.93	10.00
988	26.00	16.74
989	27.66	3.36
990	28.00	Motoring
991	27.41	Motoring
992	20.96	Motoring
993	12.15	Motoring
994	3.81	Motoring
995	0.0	0.0
996	0.0	0.0
997	0.0	0.91
998	0.0	7.52

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
999	0.0	0.0
1000	0.0	0.0
1001	0.0	0.0
1002	0.0	0.0
1003	0.0	0.0
1004	0.0	0.0
1005	0.0	0.0
1006	0.0	0.0
1007	0.0	0.0
1008	0.0	0.0
1009	0.0	0.0
1010	0.0	0.0
1011	0.0	0.0
1012	0.0	0.0
1013	0.0	0.0
1014	0.0	0.0
1015	0.0	0.0
1016	0.0	0.0
1017	0.0	0.0
1018	0.0	0.0
1019	0.0	0.0
1020	0.0	0.0
1021	0.0	0.0
1022	0.0	0.0
1023	0.0	0.0
1024	0.0	0.0
1025	0.0	0.0
1026	0.0	0.0
1027	0.0	0.0
1028	0.0	0.0
1029	0.0	0.0
1030	0.0	0.0
1031	1.77	Motoring
1032	1.60	Motoring
1033	0.0	0.0
1034	0.0	0.0
1035	2.14	9.28
1036	3.08	0.0
1037	0.0	0.0
1038	0.0	0.0
1039	0.0	0.0
1040	0.0	0.0
1041	0.0	0.0
1042	0.0	0.0
1043	0.0	0.0
1044	0.0	0.0
1045	0.0	0.0
1046	0.0	0.0
1047	0.0	0.0
1048	0.0	0.0
1049	0.0	5.51
1050	0.0	11.34
1051	0.0	0.0
1052	0.0	0.0
1053	0.0	0.0
1054	0.0	0.0
1055	0.0	0.0
1056	0.0	0.0
1057	0.0	0.0
1058	0.0	0.0
1059	0.0	0.0
1060	0.0	0.21
1061	0.0	30.00
1062	0.0	26.78
1063	0.0	20.00
1064	0.0	20.00
1065	0.0	4.12
1066	0.0	0.0
1067	0.0	0.0
1068	0.0	0.0
1069	0.0	0.0
1070	0.0	0.0
1071	0.0	0.0
1072	0.0	0.0
1073	0.0	0.0
1074	0.0	0.0
1075	0.0	0.0
1076	0.0	0.0
1077	0.0	0.0
1078	0.0	0.0
1079	0.0	0.0
1080	0.0	0.0
1081	0.0	0.0
1082	0.0	0.0
1083	0.0	0.0
1084	0.0	0.0
1085	0.0	0.0

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
1086	0.0	20.00
1087	0.0	20.00
1088	0.0	11.73
1089	0.0	0.0
1090	0.0	0.0
1091	0.0	0.0
1092	0.0	0.0
1093	0.0	0.0
1094	0.0	0.0
1095	0.0	0.0
1096	0.0	0.0
1097	0.0	0.0
1098	0.0	0.0
1099	0.0	0.0
1100	0.0	0.0
1101	0.0	0.0
1102	0.0	0.0
1103	0.0	0.0
1104	0.0	0.0
1105	0.0	0.0
1106	0.0	0.0
1107	0.0	0.0
1108	0.0	0.0
1109	0.0	0.0
1110	0.0	0.0
1111	0.0	0.0
1112	0.0	0.0
1113	0.0	0.0
1114	0.0	0.0
1115	0.0	0.0
1116	0.0	73.41
1117	0.0	90.00
1118	31.30	81.30
1119	41.15	90.00
1120	44.00	90.00
1121	46.41	90.00
1122	51.04	82.41
1123	66.66	80.00
1124	75.03	90.00
1125	89.85	90.00
1126	96.78	93.88
1127	96.91	50.94
1128	94.60	17.02
1129	99.16	28.60
1130	100.00	39.83
1131	100.00	30.00
1132	100.00	26.69
1133	100.98	20.00
1134	100.71	20.00
1135	100.00	36.06
1136	96.16	40.00
1137	95.77	30.00
1138	94.55	32.75
1139	96.86	35.68
1140	99.18	30.00
1141	100.00	44.93
1142	101.81	50.00

PERCENT RPM AND PERCENT TORQUE VERSUS TIME SCHEDULE—Continued

Record (Sec.)	Percent RPM	Percent torque
1143	86.54	Motoring
1144	63.56	Motoring
1145	56.00	Motoring
1146	46.00	Motoring
1147	41.85	45.18
1148	38.31	78.47
1149	35.98	80.00
1150	31.03	80.00
1151	25.36	80.00
1152	23.05	60.97
1153	18.20	27.34
1154	12.84	43.71
1155	10.10	68.95
1156	3.79	68.95
1157	1.48	44.28
1158	0.0	0.0
1159	0.0	0.0
1160	0.0	0.0
1161	0.0	0.0
1162	0.0	0.0
1163	0.0	0.0
1164	0.0	0.0
1165	0.0	24.97
1166	0.0	17.16
1167	0.0	6.20
1168	0.0	10.00
1169	0.0	10.00
1170	0.0	0.0
1171	0.0	0.0
1172	0.0	0.0
1173	0.0	0.0
1174	0.0	0.0
1175	0.0	0.0
1176	0.0	0.0
1177	0.0	0.0
1178	0.0	0.0
1179	0.0	0.0
1180	0.0	0.0
1181	0.0	0.0
1182	0.0	0.0
1183	0.0	0.0
1184	0.0	0.0
1185	0.0	0.0
1186	0.0	0.0
1187	0.0	0.0
1188	0.0	0.0
1189	0.0	0.0
1190	0.0	0.0
1191	0.0	0.0
1192	0.0	0.0
1193	0.0	0.0
1194	0.0	0.0
1195	0.0	0.0
1196	0.0	0.0
1197	0.0	0.0
1198	0.0	0.0
1199	0.0	0.0

[FR Doc. 79-4389 Filed 2-12-79; 8:45 am]

Federal Register

TUESDAY, FEBRUARY 13, 1979

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

DIAGNOSTIC ULTRASOUND EQUIPMENT

Development of Action Program

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Subchapter J]

[Docket No. 78N-0288]

DIAGNOSTIC ULTRASOUND EQUIPMENT

Intent to Propose Rules and Develop Recommendations

AGENCY: Food and Drug Administration.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is considering an action program for diagnostic ultrasound equipment, including that used to visualize and monitor the fetus during pregnancy and labor. The agency may develop recommendations or mandatory performance standards related to diagnostic ultrasound equipment or may require manufacturers to supply purchasers with performance data and other information related to safety. One or more actions could follow, including recommended user procedures, recommended training criteria for users, recommendations covering equipment performance, manufacture and test procedures, regulatory product performance standards, and/or informational requirements. Before beginning this program, the agency is requesting further information and is inviting comments on conceptual criteria for users and for manufacturers of diagostic ultrasound equipment.

DATES: Comments and data by August 13, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Melvyn R. Altman, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration, through the Bureau of Radiological Health (BRH) and under the authority of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.), administers and electronic product radiation control program. This authority provides for the protection of the public health and safety through development and administration of radiation safety performance standards and development of recommendations for controlling electronic product radiation. The Food and Drug Administration also has authority under the Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device Amendments of 1976 (Pub. L. 94-295; 90 Stat. 539-583 (21 U.S.C. 360c et seq.)) regarding safety and effectiveness of medical diagnostic ultrasound equipment.

The Commissioner recognizes the demonstrated benefit of the use of diagnostic ultrasound in neurology, cardiology, obstetrics and gynecology, opthalmology, and other fields of clinical medicine. Although ultrasound is now widely accepted as an indispensable diagnostic tool, the possible risks associated with diagnostic ultrasound are not fully understood. To date there have been no reports of adverse effects associated with the clinical use of diagnostic ultrasound, but clinical impressions, although valuable, do not establish conclusively that the use of diagnostic ultrasound involves no risks. Past human epidemiological studies have yielded inconclusive evidence, and it will probably be several years before definitive data will be available from current and future epidemiological studies. Thus, laboratory studies on animals must be used as indicators of possible adverse biological effects in humans.

Many of the early animal studies utilized ultrasound intensities that were well above diagnostic intensities and examined endpoints which were often representative of only gross pathological damage. However, recent reports of biological effects in animals exposed to ultrasound have involved levels of ultrasound representative of current diagnostic ultrasound applications (Ref. 1). It may be argued that many of the studies do not represent the exact exposure conditions of the clinical situations, or that the dosimetry is imperfect, or that the data have not been verified by other investigators, or that most of the data involve continuous wave exposure. However, the Commissioner believes that not all such studies can be dismissed as irrelevant, particularly because some of the studies involve the use of clinical devices.

Because of the extent of use of diagnostic ultrasound procedures during pregnancy and the recognized susceptibility of embryonic tissue to a variety of insults, those studies indicating that ultrasound can effect the development of laboratory animals exposed in utero are of particular concern. Some of the reported effects include delayed neuromotor reflex development (Ref. 2), altered emotional behavior (Ref. 3), and fetal anomalies in rodents exposed to clinical diagnostic ultrasound devices with reported acoustic outputs ranging from 20 milliwatts per square centimeter (mW/cm^2) to 40 mW/cm^2 (spatial and temporal-average intensities) (Ref. 4).

An examination of the current literature suggests that some of the most sensitive indicators of ultrasound-induced alterations appear to be associated with the central nervous system. These reported effects include increased levels of an enzyme (glutamic oxaloacetic transaminase) in the cerebrospinal fluid of dogs (Ref. 5) and induced electrical activity in the brain (evoked electroencephalographic responses) of nonhuman primates (Ref. 6) after exposure to ultrasound from diagnostic instruments with reported acoustic spatial and temporal-average intensities of 1.5 mW/cm^2 and 3 mW/cm^2 respectively.

How the available bioeffects data translate into risk to humans exposed to ultrasound is not clear at this time. There have been attempts to use the available data, both positive and negative, to construct curves or limits that delineate threshold levels or lowest levels for significant biological effects (Refs. 7, 8, and 9). Such levels have been widely interpreted as representing "safe" levels of ultrasound. However, the Commissioner does not believe such graphic analyses of isolated bioeffect data, most of which represent studies not designed to measure threshold effects, can define a safe region. It will probably be several years before the risks of diagnostic ultrasound to humans can be established and quantified. Because human studies of adverse effects from ultrasound have been inadequate, there is no direct way at this time to establish the exposure limits that assure safety in the use of this modality. Thus, the Commissioner believes manufacturers should not state in advertising or promotional literature that diagnostic ultrasound is unequivocally safe.

In view of reports of biological effects in laboratory animals after exposure to ultrasound at intensities representative of those used in a diagnostic applications (Ref. 1) and a report of increased movement of the human fetus during examination with clinical diagnostic ultrasound (Ref. 10), the Commissioner believes an individual's exposure to ultrasound should be kept as low as practicable, consistent with obtaining essential diagnostic information. Also, ultrasound exposure of pregnant humans for commercial demonstration of equipment is not considered acceptable by most professional organizations in the field.

The Commissioner is also concerned about the rapidly growing use of this modality while definitive information on biological effects is lacking. In recent years ultrasound radiation has become a common diagnostic tool in many widely varied medical specialties. The types of devices used in diag-

nostic medicine include pulse-echo imaging devices, continuous-wave Doppler units, pulse devices, and transmission equipment. One study has advocated that diagnostic ultrasound be used as a routine screening practice in all pregnancies (Ref. 11). The Obstetrical and Gynecological Device Classification Panel recommended that physicans not use this modality indiscriminately. However, the extent to which exposure to ultrasound radiation actually occurs will depend on whether available equipment is actually used in obstetrics and whether marketing forecasts are valid.

Several investigators have measured acoustic intensity levels from commercial diagnostic pulse-echo devices. The results of these limited studies indicate that the spatial and temporal-average intensities for most available pulse-echo devices are less than 10 mW/cm² (Ref. 12). However, there is currently no way to assure that all equipment will operate at these levels. For example, a report submitted by a manufacturer to BRH indicates that time-average intensity output of approximately 80 mW/cm² can be expected from the manufacturer's pulse-echo equipment. Clearly, output levels of pulse-echo devices can vary widely without operator knowledge.

Similar variation can occur with continuous-wave Doppler devices (Ref.13). One investigator has reported that obstetrical continuous-wave Doppler devices can be designed to operate at ultrasonic intensities below 5 mW/cm² (Ref. 14). Here again, widely varying outputs of similar devices designed to obtain the same medical information have been observed. It may be desirable to discourage marketing of equipment with higher intensity capabilities, unless they are justified on the basis of needed improvement in diagnostic capability. With regard to Doppler units, it is important to consider that exposure times can range from less than 1 minute to periods of several hours, as in the case of fetal monitoring during labor and delivery.

From these examples, the Commissioner, in accord with recommendations of the Obstetrical and Gynecological Device Classification Panel, believes it prudent to use the lowest practical exposure levels, consistent with obtaining needed diagnostic information, and to use diagnostic ultrasound only when there is a valid medical reason. In this respect, the Commissioner believes the proposed recommendations of the Technical Committee of the Ultrasound Section of the National Electrical Manufacturers Association (NEMA) for abdominal scanning (10 mW/cm² for pulse-echo devices) provide reasonable guidelines for the upper limits of spatial and temporal-average intensities that should be expected from these types of diagnostic ultrasound equipment (Ref. 19).

Information on acoustic emissions and imaging characteristics should be available to the user so that the user can make informed judgments regarding the use of this diagnostic modality. The Commissioner believes disclosure of output levels, as well as imaging characteristics, would aid the user in selecting equipment that would provide the desired diagnostic information while at the same time expose the patient to the lowest levels of ultrasonic radiation. Disclosure of imaging characteristics and output information would discourage claims that higher output necessarily implies more useful equipment. The Commissioner is considering requirements that output and imaging information be provided to users by manufacturers. In addition, user training activities are needed to eliminate unproductive exposure and to assure that consistently high quality diagnostic information is produced.

Several factors, including system sensitivity, resolution, gray scale dynamic range, registration, and calibration, directly affect the diagnostic capability of Doppler and/or pulse-echo equipment. Optimizing these factors can yield superior diagnostic information with minimum ultrasound exposure. Measurement surveys by FDA and other institutions indicate these factors vary widely among commercial models of diagnostic ultrasound equipment (Refs. 15 and 16). Other reports show that in the absence of routine testing and maintenance these factors vary with time for individual devices, and the informational quality of diagnostic ultrasound equipment will deteriorate (Refs. 17 and 18). The Commissioner is considering the promulgation of recommendations to users and/or equipment performance standards to improve this situation.

Because of these concerns and unresolved issues, BRH will continue to conduct biological effects investigations, evaluate equipment performance, and support research in these areas. Also, NEMA is considering ways to support biological effects studies. As in other problem areas (e.g., effects of ionizing radiation), no single study can provide all the necessary information. A program of collaborative research including well designed and executed studies is needed to determine the extent of risk to human health posed by exposure to diagnostic ultrasound. In addition to investigating biological effects, work will continue on developing methods to measure and evaluate the acoustic emissions and the imaging characteristics of diagnostic ultrasound equipment. The BRH will continue to measure and evaluate the performance of such equipment through laboratory tests and review of reports that manufacturers are required to submit as specified in §§ 1002.10 and 1002.12 (21 CFR 1002.10 and 1002.12). Current and future data will be evaluated relative to the development of recommendations and performance standards and BRH may obtain additional performance and other technical data from manufacturers. In addition, the Commissioner encourages ultrasound users to notify BRH of accidental overexposures and adverse reactions of patients and workers.

The Commissioner recognizes and encourages the constructive efforts of the industry and others towards the development of standards for safe and effective diagnostic ultrasound equipment. A joint project by NEMA and the American Institute of Ultrasound in Medicine (AIUM) may result in a voluntary safety performance standard for this equipment. In addition, the Acoustical Society of America is actively developing standards for diagnostic ultrasound devices. The Commissioner will carefully consider the results, if timely and effective, of these and other voluntary efforts before taking further action.

The Commissioner will consult one or more of the advisory committees concerned with the safety and effectiveness of diagnostic ultrasound devices—the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), the Medical Radiation Advisory Committee (MRAC), and appropriate medical device panels—concerning any further proposed action and any comments received in response to this notice. The TEPRSSC, is a permanent statutory advisory committee to the Secretary of Health, Education, and Welfare and must be consulted before the establishment of standards under the Radiation Control for Health and Safety Act of 1968. The MRAC advises and consults with BRH in formulating policy and developing a coordinated program related to use of radiation in the healing arts. Medical device panels have been established under section 513(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(b)) to make recommendations to the Commissioner for the classification of medical devices for human use. The MRAC and TEPRSSC considered drafts of this notice at their respective meetings on May 8 through 10 and June 1 and 2, 1978. Both committees generally supported the plan to publish a notice of intent concerning diagnostic ultrasound. Earlier, the Obstetrical and Gynecological Device Classification Panel recommended that all diagnostic and monitoring ultrasound devices be classified in class II, performance standards.

The following questions and conceptual criteria for users and manufacturers are provided for consideration and comment. Such criteria may be the subject of future proposed performance standards or voluntary recommendations under the acts administered by the agency.

QUESTIONS AND CONCEPTUAL CRITERIA RELATED TO THE CLINICAL USE OF DIAGNOSTIC ULTRASOUND EQUIPMENT

1. Diagnostic ultrasound should be used for human exposure only when there is a valid medical reason. Which of the following or what additional reasons should be considered valid (and under what conditions): medical diagnosis, patient or fetal monitoring, and educational and research applications approved by institutional review boards?

2. Users of diagnostic ultrasound equipment should have adequate training. How extensive should such training be? Should such training be only formalized training? Should it include instruction in both operator techniques and interpretation of diagnostic ultrasound information, instruction in performance measurements and procedures, and instruction in biological effects of ultrasound radiation?

3. Users of diagnostic ultrasound should implement adequate routine quality assurance programs to monitor equipment performance. What should be the elements of such programs? For example, should system sensitivity, depth calibration, and transducer resolution be periodically measured? What other measurements should be made?

QUESTIONS AND CONCEPTUAL CRITERIA RELATED TO THE MANUFACTURE OF DIAGNOSTIC ULTRASOUND EQUIPMENT

1. Manufacturer's specifications regarding ultrasound emissions as well as imaging effectiveness should be provided to the user. Which of the following or what additional parameters should be specified? (Items related to acoustic output defined in the proposed AIUM nomenclature (Ref. 20) are italicized):

a. Maximum and average ultrasound *intensity* in time and space;

b. Maximum and average ultrasound *power*;

c. Transducer pulse shape, *pulse duration*, and *pulse repetition rate*;

d. Transducer frequency spectrum information;

e. Transducer *beam pattern* (axial and transverse);

f. Transducer *focal length* and *focal zone*;

g. Area of transducer *beam cross-section* and *beam width* (at focal length, if focused);

h. Lateral resolution for each transducer;

i. Range resolution for each transducer (except for continuous-wave Doppler);

j. Sensitivity;

k. Position registration accuracy (for compound B-scan);

l. System dynamic range;

m. Range calibration accuracy (pulse-echo equipment).

2. Manufacturers should adopt quality control and testing programs adequate to assure that equipment performance specifications are met and that information provided with equipment is accurate. What are the elements of an adequate testing program for the manufacture of diagnostic ultrasound equipment?

3. Ultrasonic equipment maximum output capabilities should be as low as practical, consistent with obtaining needed diagnostic information. Should there be a specific recommended or mandatory limit on equipment output? For example, such a limit might require that diagnostic ultrasound equipment not produce spatial peak, time-average intensities in excess of 100 mW/cm^2 unless the manufacturer can strongly justify such exposures based on needed improvement in diagnostic capability. Would such a limit discourage trends to increased equipment output? Would such a limit be viewed as a "perfectly safe" level?

4. Diagnostic ultrasound should be used for human exposure only when there is a valid reason for its use. Are there any valid reasons for exposure of living humans to diagnostic ultrasound for purposes of commercial demonstration?

Persons or organizations wishing further information made public on the development of the action program for ultrasound diagnostic equipment and its use may write to the contact person whose address appears in the heading of this notice.

The following references are on file at the office of the Hearing Clerk, FDA, and may be seen in that office between 8 a.m. and 4 p.m., Monday through Friday:

(1) Stratmeyer, M. E., "Research Directions in Ultrasound Bioeffects—A Public Health View," Symposium on Biological Effects and Characterizations of Ultrasound Sources, June 2 and 3, 1977, pp. 240-245, HEW Publication (FDA) 78-8044.

(2) Murai, N., K. Hoshi, and T. Nakamura, "Effects of Diagnostic Ultrasound Irradiated During Fetal Stage on Development of Orienting Behavior and Reflex Ontogeny in Rats," *Tohoku Journal of Experimental Medicine*, 116:17-24, 1975.

(3) Murai, N., K. Hoshi, C. Kang, and M. Suzuki, "Effects of Diagnostic Ultrasound Irradiated During Fetal Stage on Emotional and Cognitive Behavior in Rats," *Tohoku Journal of Experimental Medicine*, 117:225-235, 1975.

(4) Shoji, R., E. Momma, T. Shimizu, and S. Matsuda, "An Experimental Study on the Effects of Low Intensity Ultrasound on Developing Mouse Embryos," *Teratology*, 6:119, 1972.

(5) Tsutsumi, Y., K. Sano, T. Kuwabara, T. Takakura, K. Hayakawa, T. Suzuki, and M. Katanuma, "A New Portable Echo-Encephalograph, Using Ultrasonic Transducers; and its Clinical Application," *Medical Electronics and Biological Engineering*, 2:21-29, 1964.

(6) Hu, J. H. and W. D. Ulrich, "Effects of Low-Intensity Ultrasound on the Central Nervous System of Primates," *Aviation, Space, and Environmental Medicine*, 47:640-643, 1976.

(7) Nyborg, W. L., "Physical Mechanisms for Biological Effects of Ultrasound," report based on series of lectures presented March 12 to April 2, 1976, at the Bureau of Radiological Health, HEW Publication (FDA) 78-8062.

(8) Ulrich, W. D., "Ultrasound Dosage for Experimental Use on Human Beings," Naval Medical Research Institute Research Report, Proj. M4306, 01-101-0 BXXO, Report #2, August 18, 1971.

(9) Wells, P. N. T., "The Possibility of Harmful Biological Effects in Ultrasound Diagnosis," *in* "Proceedings of Symposium on Cardiovascular Applications of Ultrasound," Beese, Belguim, May 29 and 30, 1973.

(10) David, H., J. B. Weaver, and J. F. Pearson, "Doppler Ultrasound and Fetal Activity," *British Medical Journal*, 2:62-64, 1975.

(11) Donald, I., "New Problems in Sonar Diagnosis in Obstetrics and Gynecology," *American Journal of Obstetrics and Gynecology*, 118:299-309, 1974.

(12) Stewart, H. F., G. R. Harris, and H. M. Frost, "Development of Principles and Concepts for Specification of Ultrasonic Diagnostic Equipment Performance," *Ultrasound in Medicine*, Vol. 3B, Edited by Dennis White and Ross Brown, Plenum Press, pp. 2115-2142, 1977.

(13) Rooney, J. A., "Determination of Acoustic Power Outputs in the Microwatts-Milliwatts Range," *Ultrasound in Medicine and Biology*, 1:1-4, 1973.

(14) Ziedonis, J. G., "Ultrasonic Power Levels Used in Commercial Equipment for Medical Applications and How to Control It for Patients Safety," Proceedings of the Society of Photo-Optical Instrumentation Engineers, 47:110-111, Aug. 1 and 2, 1974.

(15) Christensen, S. L. and P. L. Carson, "Performance Survey of Ultrasound Instrumentation and Feasibility of Routine Monitoring," *Radiology*, 122:449-454, 1977.

(16) Erickson, K. R., P. L. Carson, and H. F. Stewart, "Field Evaluation of the AIUM Standard 100 mm Test Object," *Ultrasound in Medicine*, Vol. 2, Edited by White and Barnes, Plenum Press, New York, 1976.

(17) Goldstein, A., "Gray Scale Shifts in Ultrasound Displays," *Radiology*, 121:175-162, 1976.

(18) Smith, S. W., H. Lopez, and H. F. Stewart, "Methods and Results of Dynamic Range Testing of Diagnostic Ultrasound Instrumentation," Proceedings of the Society of Photo-Optical Instrumentation Engineers (in press).

(19) Technical Committee of the Ultrasound Section of the Radiation Imaging Products Division, National Electrical Manufacturers Association, "Recommendations of the Technical Committee Proposed for Consideration," submitted to the Ultrasound Subcommittee of the BMD OB/Gyn

Device Classification Panel, October 22, 1976.

(20) Proposed American Institute of Ultrasound in Medicine (AIUM) Nomenclature, Fifth Draft, August 21, 1977.

This notice of intent is issued under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (secs. 356 and 358, 82 Stat. 1174-1179 (42 U.S.C. 263d and 263f)); the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 301 et seq.); and authority delegated to the Commissioner (21 CFR 5.1).

Interested persons are invited to participate in the development of an action program by submitting written comments, views, and data on the subject. Communications should reference the docket number appearing in the heading of this document and should be sent to the hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, by August 13, 1979. Timely comments will be considered in formulating the action program. Comments received after the closing date may be considered, depending on the stage of development of any standards or recommendations.

Dated: February 1, 1979.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 79-4659 Filed 2-12-79; 8:45 am]

Federal Register

TUESDAY, FEBRUARY 13, 1979

PART IV

ENVIRONMENTAL PROTECTION AGENCY

■

CHLOROBENZILATE

Notice of Intent to Cancel Registrations and Deny Applications for Registration of Pesticide Products Containing Chlorobenzilate

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1058-8; OPP-30000/3E]

CHLOROBENZILATE

Notice of Intent To Cancel Registrations and Deny Applications for Registration of Pesticide Products Containing Chlorobenzilate Pursuant to Section 6(b)(1) and 3(d) of Federal Insecticide, Fungicide, and Rodenticide Act

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Cancel Registrations and Deny Applications for Registration of Pesticide Products; Analysis of Comments (Position Document 4) Concerning Chlorobenzilate.

SUMMARY: On May 26, 1976, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (41 FR 21517) a notice of rebuttable presumption against registration and continued registration (RPAR) of pesticide products containing chlorobenzilate. Registrants and other interested persons were provided the opportunity to submit data and information to rebut the presumption. After reviewing all available information, the EPA determined that the cancer risk presumption announced in the chlorobenzilate RPAR had not been rebutted, and that the uses of chlorobenzilate posed risks of cancer and adverse testicular effects to certain exposed groups. The Agency also reviewed information relating to the benefits of these uses and, after considering risks in relation to benefits, determined that these risks may be reduced by modifying the terms and conditions of registration for some uses as detailed in this notice and by cancelling or denying applications for other uses. These preliminary decisions were announced in the Notice of Determination Concluding the Chlorobenzilate RPAR, published on July 11, 1978 (Preliminary Notice).

This Notice initiates actions to cancel unconditionally the registrations of the non-citrus uses of chlorobenzilate and to cancel the registrations of the citrus uses of chlorobenzilate unless registrants modify the terms and conditions of registration as required by this Notice. This Notice also notifies applicants for new registrations of non-citrus uses that these applications will be denied, and applicants for new registrations of citrus uses that unless they comply with (correct) conditions as required by this Notice and notify the Agency within 30 days, the Agency will refuse to register new citrus uses of chlorobenzilate.

FOR FURTHER INFORMATION CONTACT:

J. B. Boyd, Project Manager, Special Pesticide Review Division, Office of Pesticide Programs (TS-791), Room 447, East Tower, EPA, 401 M St. SW., Washington, D.C. 20460, 202-755-2972.

SUPPLEMENTARY INFORMATION: Position Document 4 (PD 4), which accompanies this Notice, discusses in detail the comments which were received concerning Position Document 3 (PD 3) and the Preliminary Notice. The SAP and USDA comments are included in their entirety in PD 4 as Appendix A.

I. INTRODUCTION

On June 30, 1978 (43 FR 29824; July 11, 1978) the Environmental Protection Agency issued a Notice of Determination pursuant to 40 CFR 162.11(a)(5), terminating the Chlorobenzilate RPAR. The Agency determined that the risks of using chlorobenzilate on citrus crops in Florida, Texas, and California, are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency further determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, and that these risk reductions can be achieved without significant impacts on the benefits of the uses. In addition, the Agency decided to require registrants and applicants for registration for these citrus uses to conduct additional exposure studies in order to permit the Agency to further refine its exposure estimates.

With respect to the non-citrus uses of chlorobenzilate and the use of chlorobenzilate on citrus crops in Arizona, the Agency determined that the risks of chlorobenzilate use outweigh the benefits, and the Agency initiated action to cancel or deny registrations for these uses.

The remainder of this Notice sets forth in detail the Agency's analysis of the comments submitted by the Secretary of Agriculture, the FIFRA Scientific Advisory Panel (SAP), and other interested parties regarding the reasons and factual bases for the regulatory actions announced in the Notice of Determination.

This Notice is organized into four Sections. This introduction is section I. Section II, titled "Legal Background," is a general discussion of the regulatory framework within which these actions are taken. Section III and the accompanying PD 4 set forth the bases for the decisions. Section IV, titled "Procedural Matters," is a brief discussion of the procedures which will be followed in implementing the regulatory actions which the Agency is announcing in this Notice.

II. LEGAL BACKGROUND

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires (among other things) that the pesticide perform its intended function without causing "unreasonable adverse effects" on the environment [section 3(c)(5)]. "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" (FIFRA, section 2(bb)). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with the terms and conditions of registration, or in accordance with commonly recognized practice. The manufacturer's burden of proving that a pesticide satisfies the registration standard continues as long as the registration remains in effect. Under section 6 of FIFRA the Administrator is required to cancel the registration of a pesticide or modify the terms and conditions of registration whenever he determines that the pesticide no longer satisfies the statutory standard for registration.[1]

The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a structure for gathering and evaluating information about the risks and benefits of these uses. This structure invites public participation at major points in the evaluation process.

The RPAR process is set forth at 40 CFR 162.11. This section provides that

[1]The statutory standard for registration also requires that the pesticide satisfy the labeling requirements of FIFRA. These requirements are set out in the statutory definition of "misbranded" [FIFRA Section 2(q)]. Among other things, this Section provides that a pesticide is misbranded if "the labeling . . . does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any * * * [restrictions] imposed under section 3(d) * * * are adequate to protect health and the environment." The Agency can require changes to the directions for use of a pesticide in most circumstances either by finding that the pesticide is misbranded if the labeling is not changed, or by finding that the pesticide would cause unreasonable adverse effects on the environment, unless labeling changes are made which accomplish risk reductions.

a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to man or the animal or plant of concern with regard to the adverse effect in question.[2] Further, in addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use.

The regulations require the Agency to conclude an RPAR by issuing a Notice of Determination. In that Notice, the Agency states and explains its position on the question whether the risk presumption has been rebutted. If the Agency determines that the presumption is not rebutted, it then considers information relating to the social, economic, and environmental costs and benefits which registrants and other interested persons submitted to the Agency, and any other benefits information known to the Agency. If the Agency determines that the risks of a pesticide use appear to outweigh its benefits, the RPAR process finally concludes with a Notice of Intent to Cancel or Deny Registration, pursuant to FIFRA section 6(b)(1) or section 3(c)(6).

When the uses of a pesticide appear to pose risks which are greater than benefits, the Agency considers modifications to the terms and conditions of registration which can reduce risks, and the impacts of such modifications in the terms or conditions of registration on the benefits of the use. The risk reduction measures, short of cancellation, which are available to the Agency include requiring changes in the directions for use on the pesticide's labeling, and classifying the pesticide for "restricted use", pursuant to FIFRA, section 3(d).

The statute requires the Agency to submit notices issued pursuant to section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy [section 6(b)]. The Agency is required to submit these documents to the Secretary at least 60 days before making the Notice effective by sending it to registrants or making it public. The Secretary of Agriculture is required to comment in writing within 30 days of receiving the Notice, and the Agency is required to publish the Secretary's comments and the Administrator's response with publication of the Notice. The statute also requires the Administrator to submit Section 6 notices to a Scientific Advisory Panel (SAP) for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described for review by the Secretary of Agriculture [FIFRA section 25(d)].

Although not required to do so under the statute, the Agency decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decision-making to afford an opportunity to registrants and other interested persons to comment on the bases for the proposed action during the time that the proposed action is under review by the Secretary of Agriculture and the SAP. Accordingly, the Preliminary Notice and PD 3 were made available to registrants and other interested persons at the time the decision documents were transmitted for formal external review (The Preliminary Notice was published in the FEDERAL REGISTER; interested persons were notified that PD 3 was available through publication of a Notice of Availability in the FEDERAL REGISTER and by other means). Registrants and other interested persons were allowed the same period of time to comment, 30 days, that the statute provides for receipt of comments from the Secretary of Agriculture and the SAP. The Agency extended this period to allow time for a public meeting to be held during the comment period; this amounted to a 17-day extension. Moreover, the Agency considered comments received after this date, to the extent it was possible to do so, consistent with orderly decision making.

III. DETERMINATIONS AND ANNOUNCEMENT OF REGULATORY ACTIONS

As detailed in the Preliminary Notice and PD 3, the Agency considered information on the risks associated with the uses of chlorobenzilate, including information submitted by registrants and other interested persons in rebuttal to the chlorobenzilate RPAR. The Agency also considered information on the social, economic, and environmental benefits of the uses of chlorobenzilate subject to the RPAR, including benefits information submitted by registrants and other interested persons in conjunction with their rebuttal submissions and information submitted by the United States Department of Agriculture. The Agency's assessment of the risks and benefits of the uses of chlorobenzilate subject to this RPAR, its conclusions and determinations on whether any uses of chlorobenzilate pose unreasonable adverse effects on the environment, and its determination on whether modifications in terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects, were summarized in the Preliminary Notice and set forth in detail in PD 3. PD 3 was adopted by the Agency as its statement of reasons for the determinations and actions announced in the Preliminary Notice and as its analysis of the impacts of the proposed regulatory actions on the agricultural economy.

This Notice constitutes the Agency's Final Notice of Determination Concluding the Chlorobenzilate RPAR. It reflects modifications in the Agency's initial determinations on the risks, benefits, and unreasonable adverse effects of chlorobenzilate pesticide uses which the Agency has concluded are appropriate, after review of the comments and information received concerning PD 3 and the Preliminary Notice from the Secretary of Agriculture, the SAP, and other sources. This Notice also reflects the modifications in the regulatory actions announced in the Preliminary Notice which the Agency has concluded are appropriate, in light of the comments and other information received on PD 3 and the Preliminary Notice from all sources. PD 4, which accompanies this Notice, discusses in detail the information that was received,[3] and the Agency's

[2] 40 CFR 162.11(a)(4) provides that registrants and applicants may rebut a presumption against registration by sustaining the burden of proving: "(1) In the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraphs (a)(3)(i) or (iii) that when considered with the formulation, packaging, method of use, and proposed restrictions and directions for use and widespread and commonly recognized practices of use, the anticipated exposure to an applicator or user and to local, regional or national populations of nontarget organisms is not likely to result in any significant acute adverse effects; or (ii) in the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraph (a)(3)(ii) that when considered with proposed restrictions on use and widespread and commonly recognized practices of use, the pesticide will not concentrate, persist, or accrue to levels in man or the environment likely to result in any significant chronic adverse effects; or (iii) that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error. A primary purpose of the RPAR process is to screen for appropriate action those pesticide uses which pose risks which are of sufficient concern to require the Agency to consider whether offsetting benefits justify the risks. Accordingly, the Agency's approach to rebuttal determinations concentrates on whether the risk concerns which are central to each RPAR proceeding have in fact been answered.

[3] The comments received from the SAP and the Secretary of Agriculture are attached as Appendix A to PD 4. All other

Footnotes continued on next page

reasons for changing or not changing its initial determinations and the regulatory actions announced in the Preliminary Notice. Finally, this Notice announces the regulatory actions which the Agency is implementing concerning chlorobenzilate. The Agency hereby incorporates PD 3 and PD 4 as its statement of reasons for these actions.

A. DETERMINATIONS ON RISKS

The chlorobenzilate RPAR was based on laboratory studies showing that chlorobenzilate induced oncogenic effects in experimental mammalian species. The Agency has determined that the presumption that chlorobenzilate poses an oncogenic risk was not rebutted. The Agency has determined that two of the studies which formed the basis for the Chlorobenzilate RPAR were insufficiently reliable to assess the oncogenicity of chlorobenzilate. However, the Agency has further determined that several other studies provide a reliable basis for concluding that chlorobenzilate induces oncogenic effects in experimental mammalian species, and that under the Agency's Interim Cancer Assessment Guidelines, these laboratory studies provided substantial evidence that chlorobenzilate poses a cancer risk to humans. The Agency has further determined that human exposure may result form the uses of chlorobenzilate, and that chlorobenzilate use therefore poses a cancer risk to man of sufficient magnitude to require the Agency to determine whether the uses of chlorobenzilate offer offsetting social, economic, or environmental benefits. The Agency identified the key populations at risk with respect to chlorobenzilate use: the U.S. populations at large, Florida residents, pesticide applicators, and citrus pickers.

The Agency has further determined that exposure levels to male pesticide applicators are high enough, in comparison to the "no observable effect" levels for adverse testicular effects in rats, to warrant a conclusion that chlorobenzilate may pose a risk of adverse effects to the testes of applicators of sufficient magnitude to require the Agency to determine whether offsetting social, environmental, or economic benefits result from the uses of the pesticide.

B. DETERMINATIONS ON BENEFITS

The uses of chlorobenzilate which are subject to this notie are grouped into two categories: Citrus uses, and other uses.[4]

1. *Citrus uses.* Chlorobenzilate is used on citrus crops in Florida, Texas, California, and Arizona to control mites. Most of this use (72%) occurs in Florida. Significant adverse economic and environmental impacts would occur if mite pests were controlled by alternative miticides. Chlorobenzilate is used in citrus integrated pest management ("IPM") because it is selective to mites and does not kill predators and parasites of citrus scale pests. Such integrated pest management approaches are used extensively in Florida, to a lesser extent in most other citrus growing regions, and IPM programs are planned in Arizona. These are several other selective miticides registered for use on citrus crops, and a number of nonselective miticides are registered for use on citrus crops.

With respect to Florida, the Agency has determined that chlorobenzilate cancellation would cause significant increases in pest control costs. Nonselective miticides would be the predominant replacements for chlorobenzilate, for economic and other reasons developed in detail in PD 3. This would necessitate abandonment of IPM control of scale insects because of reduction in populations of beneficial insects (i.e., scale parasites), and the subsequent use of large volumes of chemical pesticides to control scale insects.

In Texas, pest control costs would also increase if chlorobenzilate were cancelled. Economic and other factors favor adoption of selective alternatives to a greater extent in Texas than in Florida. However, the selective alternatives appear to pose risk problems which warrant caution in encouraging their increased use.

Relatively small amounts of chlorobenzilate are used in California on a few citrus corps in one area. However, its use is almost entirely in connection with integrated pest control. Cancellation of chlorobenzilate for this use would have a significant economic impact, because there are no registered alternatives that the Agency believes are suitable chlorobenzilate replacements.

Although the loss of chlorobenzilate and the adoption of alternative miticides is projected to have no net economic impact to Arizona citrus growers, the use fo alternatives could disrupt projected IPM strategies in Arizona and lead to more environmentally adverse pest management practices.

2. *Other uses.* With respect to the other uses of chlorobenzilate, the Agency has determined that registered alternatives are available for each use; in some cases the alternatives are less expensive than chlorobenzilate, and achieve comparable levels of control.

C. DETERMINATIONS ON UNREASONABLE ADVERSE EFFECTS

The Agency has made the following unreasonable adverse effect determinations with respect to the uses of chlorobenzilate subject to this RPAR:

1. *Determinations on citrus uses.* The Agency has determined that the risks of the citrus uses of chlorobenzilate in Florida, Texas, California, and Arizona are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency has further determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, and that these risk reductions can be achieved without significant impacts on the benefits of the uses. Accordingly, the Agency has determined that unless these changes in the terms and conditions of registration are accomplished, the citrus uses of chlorobenzilate in Florida, Texas, California and Arizona will generally cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of chlorobenzilate pesticide products for citrus uses will not comply with the provisions of FIFRA.

2. *Determinations on uses other than the citrus use.* The Agency has determined that the uses of chlorobenzilate other than the citrus use which are subject to this notice pose risks which are greater than the social, economic, and environmental benefits of the use. Accordingly, the Agency has determined that these uses of chlorobenzilate will generally cause unreasonable adverse effects on the environment when used in accordance with commonly recognized practice; the notice of intent to cancel these uses is hereby announced.

D. OTHER DETERMINATIONS

The Agency has determined that registrants and applicants for registration of chlorobenzilate products for citrus uses must develop and submit to the Agency within 1 and ½ years the additional exposure studies described in Section IV of PD 3. The Agency will use the exposure data for the purpose of refining its exposure estimates with

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Footnotes continued from last page

comments are available for public inspection in the chlorobenzilate public file, except for limited portions of some comments which are protected from public disclosure by FIFRA, section 10.

[4] The category of "other" uses consists of these agricultural crops: cotton; fruits, and nuts (apples, pears, cherries, almonds, and walnuts); melons (casaba, cantaloupes, crenshaw, honeydew, Persian); ornamentals (lawns and turf), grass (herbaceous plants and bulbs) aster, carnations, chrysanthemums, gladioli, iris, marigold, phlox, snapdragon, zinnia; (woody shrubs, trees and vines) arbovitae, azaleas, birch, boxwood, camellia, Douglas fir, elm, hawthorn, hemlock, holly, juniper, lilac, locust, maple, oak, ornamental shrubs, ornamental trees, pine, poplar, rhododendron, roses, spruce, willow yew; domestic dwellings, medical facitities and schools, commercial establishments (areas other than edible product areas) outdoor areas, boats, and docks.

respect to the citrus uses of chlorobenzilate, and re-assessing its conclusions that use of chlorobenzilate on citrus crops in Florida, Texas, California, and Arizona, in accordance with the modifications to the terms or conditions of registration determined herein to be necessary, does not cause unreasonable adverse effects on the environment.

The rat reproductive study described in PD4 will be used by the Agency to further evaluate the safety of these uses.[5]

E. ANNOUNCEMENT OF REGULATORY ACTIONS

Based upon these determinations, the Agency is initiating the following regulatory actions, and this document shall constitute its notice of intent regarding these actions:

1. Cancellation and denial of registrations of chlorobenzilate products for uses other than citrus uses in Florida, Texas, California, and Arizona.

2. Cancellation and denial of registrations of chlorobenzilate products registered for use on citrus crops in Florida, Texas, California, and Arizona, unless registrants or applicants for registration modify the terms or conditions of registration as follows:[6]

a. Classification of chlorobenzilate products for these citrus uses for restricted use, for use only by or under the direct supervision of certified applicators.

b. Modification of the labeling of chlorobenzilate products for these citrus uses to include the following:

(1) *Restricted Use Pesticide*

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

(2) *General Precautions*

a. Take special care to avoid getting chlorobenzilate in eyes, on skin, or on clothing.

b. Avoid breathing vapors or spray mist.

c. In case of contact with skin, wash as soon as possible with soap and plenty of water.

d. If chlorobenzilate gets on clothing, remove contaminated clothing and wash affected parts of body with soap and water. If the extent of contamination is unknown, bathe entire body thoroughly. Change to clean clothing.

e. Wash hands with soap and water each time before eating, drinking, or smoking.

f. At the end of the work day, bathe entire body with soap and plenty of water.

g. Wear clean clothes each day and launder before reusing.

(3) *Required Clothing and Equipment for Application*

a. One-piece overalls which have long sleeves and long pants constructed of finely-woven fabric as specified in the *USDA/EPA Guide for Commercial Applicators.*

b. Wide-brimmed hat.

c. Heavy-duty fabric work gloves.

d. Any article which has been worn while applying chlorobenzilate must be cleaned before reusing. Clothing which has been drenched or has otherwise absorbed concentrated pesticide must be buried or burned.

e. Facepiece respirator of the type approved for pesticide spray applications by the National Institute for Occupational Safety and Health.

f. Instead of the clothing and equipment specified above, the applicator can use an enclosed tractor cab which provides a filtered air supply. Aerial application may be conducted without the specified clothing and equipment.

(4) *Handling Precautions*

Heavy duty rubber or neoprene gloves and apron must be worn during loading, unloading, and equipment clean-up.

In addition to these actions, the Agency will soon be initiating action to require the additional exposure studies referred to earlier to be accomplished and submitted to the Agency. This action is required by this notice, but will be implemented by subsequent correspondence from the Registration Division, Office of Pesticide Programs, to registrants and applicants for registration of chlorobenzilate products for citrus uses.

IV. PROCEDURAL MATTERS

This Notice initiates actions to cancel unconditionally the registrations of the non-citrus uses of chlorobenzilate and to cancel the registration of the citrus uses of chlorobenzilate unless registrants modify the terms and conditions of registration as required by this Notice. This Notice also notifies applicants for new registrations of non-citrus uses that these applications will be denied, and applicants for new registrations of citrus uses that unless they comply with (correct) conditions as required by this Notice and notify the Agency on or before March 15, 1979, the Agency will refuse to register new citrus uses of chlorobenzilate.

Under Sections 6(b) and 3(d) of FIFRA, applicants, registrants, and other interested or affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. This Section of the Notice explains how affected persons may request a hearing, and the consequences of requesting or failing to request a hearing in accordance with the procedures specified in this Notice.

A. PROCEDURE FOR REQUESTING A HEARING

1. *When a hearing must be requested for cancellation actions.* Registrants affected by the actions initiating cancellation of the registered uses of chlorobenzilate may request a hearing on specific registered uses within 30 days of receipt of this notice, or on or before March 15, 1979, whichever occurs later. Any person adversely affected by the cancellation actions initiated by this notice may request a hearing on specific registered uses affected by this notice on or before March 15, 1979.

2. *When a hearing must be requested for actions to deny applications.* Applicants for new registration of the uses affected by this notice may request a hearing on specific uses within 30 days of receipt of this notice or on or before March 15, 1979, whichever occurs later. Other interested persons may request a hearing with the concurrence of the applicant during the time period available to the applicant.

3. *How to request a hearing.* All registrants, applicants, and other interested or affected parties who request a hearing must file the request in accordance with the Agency's Rules of Practice Governing Hearings (40 CFR, Part 164). These procedures specify among other things, that: 1) all requests for a hearing must be accompanied by objections that are specific for each use for which a hearing is requested [40 CFR 164.20(b)], and 2) that all requests must be received by

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[5] For the Agency's authority to require registrants to conduct studies relevant to assessing the risks and benefits of a pesticide, and to report the results thereof to the Agency, see FIFRA section 3(c)(2)(B).

[6] FIFRA section 6(b)(1) provides that the Administrator may initiate proceedings to cancel a registration or change its use classification, where the Administrator finds that the pesticide does not satisfy the statutory standard for registration. However, the registered chlorobenzilate products subject to this action have not yet been initially classified. Accordingly, any classification action with respect to these products is an initial classification, and not a change in classification. Initial classification generally does not give rise to a right to review the classification decision in an adjudicatory hearing. [See Preamble to *Optional Procedures for Classification of Pesticide Uses by Regulation*, 43 FR 5782, 5784 (Feb. 9, 1978)]. However, in view of the fact that the Agency is proposing other changes to the terms or conditions of the registration (e.g. labeling changes) for registered chlorobenzilate products, which are reviewable in adjudicatory hearings, the Agency has determined that it is appropriate to exercise its discretion to fashion procedures in excess of minimum statutory requirements, and to permit the question of whether chlorobenzilate products for citrus uses should be initially classified for restricted use and its use limited to certified applicators to be reviewed in any such adjudicatory hearing as well.

the Hearing Clerk within the applicable thirty (30) day time period [40 CFR 164.5(a)]. Failure to comply with these requirements will automatically result in denial of the request for a hearing.

Requests for hearings must be submitted to:

Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 2060.

B. CONSEQUENCES OF FILING OR FAILING TO FILE A HEARING REQUEST

1. *Consequences of filing a timely and effective hearing request.* If a hearing on the Administrator's intent to cancel the citrus and/or non-citrus uses of chlorobenzilate is requested in a timely and effective manner before the end of the 30-day notice period, the hearing will be governed by the Agency's rules of practice for hearings under FIFRA Section 6 (40 CFR, Part 164). In the event of a hearing, the cancellation and denial actions subject to the hearing will not become effective except pursuant to orders of the Administrator at the conclusion of the hearings.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing on the Administrator's intent to cancel the non-citrus uses of chlorobenzilate is not requested in accordance with the procedures specified above within the 30-day notice period, cancellation of the non-citrus uses of chlorobenzilate becomes final and effective at the end of the 30-day notice period.

If a hearing on the Administrator's intent to cancel conditionally the citrus uses of chlorobenzilate is not requested in accordance with the procedures specified above within the 30-day notice period, immediately after this 30-day notice period, the Agency will notify registrants and applicants of the procedures for amendment of their registrations and applications in accordance with the determinations specified in this notice. This notification will establish the date(s) on which the cancellations will become effective if registrants do not apply to amend their registrations as required by this notice, and will provide other necessary instructions and information.

Dated: February 5, 1979.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

CHLOROBENZILATE POSITION DOCUMENT 4

SPECIAL PESTICIDE REVIEW DIVISION, OFFICE OF PESTICIDE PROGRAMS, OFFICE OF TOXIC SUBSTANCES, U.S. ENVIRONMENTAL PROTECTION AGENCY

CHLOROBENZILATE

Project Support Team

J. Blondell, Health Statistician, BFSD, OPP
K. Keaney, Regulatory Analyst, SPRD, OPP
G. Ludvik, Entomologist, HED, OPP
M. Luttner, Economist, BFSD, OPP
L. Marcus, Typist, SPRD, OPP
L. Mishra, Pharmacologist, HED, OPP
K. O'Steen, Writer/Editor, SPRD, OPP
D. Patton, Attorney, OGC
D. Reed, Chemist, HED, OPP
D. Severn, Chemist, HED, OPP
E. Siegler, Attorney, OGC
J. Boyd, Project Manager, SPRD, OPP

Pesticide Chemical Review Committee (PCRC)

E. Anderson, CAG
R. Hill, OTS
A. Jennings, OPM
D. Kuroda, ORD
J. Neylan, PTSED
M. Winer, OGC
W. Wells, Chairman, SPRD, OPP

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I. INTRODUCTION

Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA) (7 U.S.C. Section 136 *et seq.*), the Environmental Protection Agency (EPA or the Agency) regulates all pesticide products. Section 6(b) of FIFRA authorizes the Administrator of the EPA to issue a notice of intent to cancel the registration of a pesticide or to change its classification if it appears to him that the pesticide or its labeling "does not comply with the provisions of [FIFRA] or, when used in accordance with wide-spread and commonly recognized practice, generally causes unreasonable adverse effects on the environment." Section 3(c)(6) authorizes the Administrator to deny applications for pesticide registration if the statutory standards for registration are not met.

The Agency designed the Rebuttable Presumption Against Registration (RPAR) process to gather risk and benefit information about problem pesticides and to make balanced decisions concerning them in a manner which allows all interested groups to participate. This process is set forth in 40 CFR 162.11.

On May 26, 1976, the Agency issued an RPAR notice for pesticide products containing chlorobenzilate (41 FR 21517, May 26, 1976). The chlorobenzilate RPAR was one of the first issued by the Agency. At the time it was issued, Agency RPAR procedures were still in a formative stage, and a detailed Position Document 1 did not accompany the chlorobenzilate RPAR notice.

On June 30, 1978, the Agency issued Position Document 3 for chlorobenzilate, and published a notice of determination and availability of the position document in the FEDERAL REGISTER on July, 11, 1978 (43 FR 29824-29828). In Position Document 3 the Agency analyzed the rebuttals it received in response to the original RPAR notice, presented its analysis of both the risks and benefits associated with the uses of chlorobenzilate, and proposed a decision to conclude the RPAR process.

40 CFR 162.11 requires the Agency to submit notices issued pursuant to Section 6 to the Secretary of Agriculture for comment on the impact of the proposed action on the agricultural economy [Section 6(b)] and to a Scientific Advisory Panel (SAP) for comment on the impact of the proposed action on health and the environment [Section 25(d)]. The Agency is required to submit these documents to the Secretary and the SAP at least 60 days before making the notice effective by sending it to registrants or making it public. The Secretary of Agriculture and SAP are invited to comment in writing within 30 days of receiving the notice, and the Agency is required to publish their comments and the Administrator's response with publication of the notice.

Although not required to do so under the statute, the Agency has decided that it is consistent with the purposes of the RPAR process and the Agency's overall policy of open decision-making to afford registrants and other interested persons an opportunity to comment on the bases for the proposed action while it is under review by the Secretary of Agriculture and the SAP.

The Agency has received a number of comments in response to the June 30, 1978 Notice of Determination and the Chlorobenzilate Position Document 3. The Agency also considered comments which were received after the mandatory 30-day period allowed by law. All comments received either during or after the 30-day period were made available in the public file for review and evaluation by the public. Responses from the SAP, the U.S. Department of Agriculture, and other interested parties have been analyzed and are addressed in Section II of this document. Section III summarizes the Agency's decision concerning pesticide products containing chlorobenzilate. The responses from the SAP and the USDA are contained in Appendix A in their entirety.

II. ANALYSIS OF COMMENTS

The Agency received comments from the Secretary of Agriculture, the Scientific Advisory Panel (SAP), and 15 other concerned individuals and organizations. These comments are organized by topic and discussed below. As indicated in the following discus-

sion, the Agency has revised some aspects of its assessment of risks, benefits, and regulatory requirements in accordance with USDA, SAP, and other recommendations. Except as discussed below, other aspects of the analyses presented in Position Document 3 are unchanged.

A. COMMENTS RELATING TO RISK

1. *EPA Risk Assessment.* The chlorobenzilate risk assessment was based in part on data from studies by Innes and the National Cancer Institute (NCI) which showed that chlorobenzilate produced statistically significant increases in the incidence of tumors in male mice ingesting the pesticide.

a. *Problems in Extrapolating Risk to Actual Human Populations.* One commenter [42 (30000/3D)] stated that, "EPA's (cancer) risk assessment does not account for the heterogeneity of the human population and subpopulations of more susceptible individuals compared to the homogeneity of animal populations in test situations. It also does not account for the fact that human populations exposed to chlorobenzilate, as opposed to test animal populations, are composed of sick and poorly nourished individuals as well as healthy people. Further, the EPA assessment does not account for possible greater sensitivity of the human population than even the most sensitive rodent species tested. Finally, CAG's assessment does not account for synergistic effects from exposure to other toxic chemicals in the human environment to which humans are exposed."

First, the Agency notes that the risk assessment, like many other aspects of the Agency's risk/benefit analysis, is based on various relevant factors, data, and considerations. However, not all such factors are known to the Agency or usable in the risk/benefit analysis. In many cases the nature of and limits on the Agency's estimates for chlorobenzilate are detailed and explained in Position Document 3. Because uncertainties such as synergism and heterogeneity exist, the Agency used the most conservative model and test results from the most sensitive group of test animals to extrapolate to humans the cancer risk associated with chlorobenzilate.

More specifically, with respect to heterogeneity, the straight-forward simplified model of population effects used by the Carcinogen Assessment Group (CAG) is a probabilistic model which only attempts to estimate the overall impact of the use of the compound. The Agency recognizes that some people will be more sensitive than the average and others will be less sensitive, but no detailed information about the distribution of sensitivities is available. It is, therefore, impossible to factor this kind of information into a risk estimate.

With respect to synergism, one of the many uncertainties in estimating the risk to humans is the concomitant exposure to other chemicals along with chlorobenzilate. Some of these chemicals could have additive effects, whereas others could potentiate or counteract the effects of chlorobenzilate. As with heterogeneity, the Agency cannot factor this kind of information into a risk estimate because no realistic model of the nature and amounts of the background exposure to other chemicals is available.

b. *Innes Study Deficiencies.* One commenter [40 (30000/3D)] outlined what he believed to be significant deficiencies in the Innes study. Specifically, this commenter argued that the physical location of the animals which were fed chlorobenzilate in relation to the positive control groups may have resulted in contamination of the treated animals by other chemicals which could have caused the tumors and, therefore, invalidated the study.

The Agency found that in the Innes study many groups of animals were kept in the same room; this included 27 groups of animals on which various pesticides were being tested, including the animals which were being fed chlorobenzilate and the positive and negative controls. While the current practice is to avoid co-housing of this type, the possibility that contamination affected the outcome of the study is low since the untreated controls did not develop tumors, and only 3 of the 27 other groups of animals being tested showed an increase in tumor incidence.

This commenter also contended that the Agency's risk estimate should have been based on the tumor incidence among female mice of the NCI study using a time-to-tumor model.

The Agency generally uses the more conservative linear model and the most sensitive group of test animals (in the case of chlorobenzilate, male mice from the NCI study as well as the male mice from the Innes study) in developing its risk estimates. This is based on the fact, as discussed above, that there are many uncertainties which the Agency cannot factor into a risk estimate, such as species difference, susceptible subgroups of the human population, lack of adequate data about human exposure, and the synergistic effect of chemicals, which make a more conservative approach to assessing cancer risk to humans preferable to a liberal one.

Another commenter [42 (30000/3D)] submitted a published pathological review (Reuber, M.D., *Digestion* 16: 308, 1977) of the Innes study in support of its validity in indicating oncogenic risk. The CAG recognized and cited this paper in their final assessment of chlorobenzilate.

2. *Dietary Risks.* The general population of the United States was identified in Position Document 3 as being potentially at risk from exposure to chlorobenzilate in the diet. Florida residents may ingest additional amounts of chlorobenzilate because pulp from chlorobenzilate-treated citrus fruit is fed to dairy cattle and beef cattle which are raised and marketed in Florida. Thus, residents of Florida may be indirectly exposed to chlorobenzilate in milk and meat as well as directly exposed to chlorobenzilate from treated citrus fruit, while the general population in the rest of the United States is potentially exposed to chlorobenzilate residues only from treated citrus fruit and citrus fruit byproducts (Position Document 3, pp. 25-27).

a. *Risk to General Population.* The Secretary of Agriculture [36 (30000/3)] recommended that the Agency recalculate the dietary exposure estimates "based on obtainable analytical sensitivity. In addition, these theoretical calculations should be replaced with actual exposure data as it becomes available. The frequency of positive chlorobenzilate residue traces should also be taken into account in calculating theoretical exposure levels."

To recalculate dietary exposure estimates based on the most sensitive analytical methods which are currently available might lead the Agency to underestimate the actual exposure, since most of the monitoring data were obtained with less sensitive methods. Therefore, this suggestion is not acceptable.

By the same reasoning, the suggestion to take into account the frequency of positive samples in the monitoring data was also rejected, since the Agency cannot be sure that samples which appeared to be negative did not actually have chlorobenzilate residues which could have been detected if more sensitive analytical methods had been used. The Agency will, however, revise its estimate of dietary exposure if the required monitoring data indicate that a revision is necessary.

b. *Risk to Infants in Florida.* One commenter [42 (30000/3D)] asserted that the "risk to infants was not factored into CAG's risk assessments," although the CAG forsaw a "risk to infants who could get chlorobenzilate residues from cow's milk via pulp feed as well as through orange juice (Position Document 3, p. 33)." This commenter claimed that according to his calculations, "the dose to child/kg body weight may be greater than 70 times that of an adult."

The Agency recognizes that since milk makes up a large portion of an infant's diet, infants in Florida could be exposed to relatively more chlorobenzilate than adults in Florida, but to the Agency's knowledge, no actual residues of chlorobenzilate have been detected in milk or orange juice intended for human consumption. However, in an attempt to deal with the general possibility of low-level residues, in Position Document 3 Agency scientists projected residues to occur in milk at levels just below the current level of detection.

c. *Revisions in Exposure Analysis.* In order to take account of the higher percentage of milk in an infant's diet, the Agency has recalculated the percentage increase in life-time exposure to chlorobenzilate for infants in Florida. The Agency found that this factor would increase its previous cancer risk estimate by 4% to 14% for infants in Florida (Anderson, 1978b). As indicated by the requirement to develop data on milk and pulp residues (described in pages 85-86 of Position Document 3), this issue is of concern to the Agency. However, the results of the cattle feeding study and milk monitoring data are needed in order to more accurately estimate the additional risk to infants.

Also, the risk associated with milk applies only to the State of Florida, not the entire population of the United States, as the commenter assumed. The additional exposure associated with beef and milk in Table 3 of Position Document 3 refers only to Florida, and has been corrected to indicate this. The revised table appears on page 11.

Although no comments were received on the potential dietary exposure through residues of chlorobenzilate in citrus oil, the Agency is also concerned about this issue. Analyses by EPA laboratories found chlorobenzilate residues of 36 to 53 ppm in orange oil, and 86 and 91 ppm in grapefruit oil, using samples representing "cold-pressed

oil" from eight samples of oranges and two of grapefruit (Kutz, 1978).

The oil content of citrus juices is limited by USDA grading standards to levels varying between 0.015 and 0.03%. For grapefruit juice, the oil content is limited to 0.02%. Thus, the residues which the oil contributes to citrus juices are calculated to be in the range of 0.92 ppm, i.e., 0.02% x 100 ppm in oil.

The only foods where some additional exposure from the use of citrus oil as a flavoring agent can be calculated are fruit-flavored drinks (ready-to-drink, concentrated, and powdered forms). The USDA Household Food Consumption Survey indicates consumption of 19.2 grams/person/day for carbonated fruit-flavored soft drinks and 18.8 grams/person/day for non-carbonated fruit drinks, concentrates, and mixes. Assuming that citrus oil flavorings contribute similar levels of residues to all fruit-flavored soft drinks, concentrates, and powders, as was calculated above for fruit juices, 0.02 ppm x (19.2+18.8 grams)=0.76 μg chlorobenzilate ingested/day. This calculation makes no adjustment for the fact that not all fruit drinks are citrus-flavored (since the Agency has no consumption breakdown), but, on the other hand, does not include the use of citrus oil to flavor foods such as candy, baked goods, and liqueurs.

The additional 0.76 μg/day is roughly 20% of the total dietary chlorobenzilate exposure from fruit (3.8 μg/day) calculated by the EPA in Position Document 3. The Agency has revised its dietary exposure calculations to reflect this additional exposure. This is reflected in Tables 3, 7, and 8 from Position Document 3; these revised tables are included on pages 11, 12, and 13.

[6560-01-C]

TABLE 3

REASONABLE UPPER LIMIT OF DIETARY EXPOSURE TO CHLOROBENZILATE

U.S. Population Exposure

Commodity	Consumption[a] (g/day)	Extent[b] of Use by Crop (%)	Assumed[c] Maximum Residue (ppm)	Maximum Ingestion (ug/day)
Citrus:				
Oranges (Inc.juice)	42.00	47.80	0.1	< 2.01
Grapefruit	19.30	60.90	0.1	< 1.18
Other Citrus g/	12.70	31.00	0.1	< 0.40
Flavored Drinks	38.00	-	0.02	< 0.76
Other Fruit.	55.20	0.08	5.0[d]	< 0.21
Nuts:	1.18	3.60	0.1	< 0.0043
Total U.S.				< 4.56 (0.0024 ppm)

Florida Population's Additional Exposure[e]

(Percent with Potential Occurrence)[f]

Beef and Lamb	143.2	10	0.04	< 0.57
Milk	184.7	100	0.0024 - 0.04	< 0.44 - < 7.39
Total Florida Additional				< 1.01 - < 7.96
Grand Total Florida				< 5.57 - < 12.52 (< 0.0029 - < 0.0065 ppm)

a/ Severn, 1978
b/ Doane, 1976
c/ Detection level in the most representative sampling
d/ Tolerance level
e/ Feeding by-products of citrus processing (pulp and molasses) to cattle in Florida is viewed as an indirect dietary souce of chlorobenzilate. It results in additional dietary exposure for the Florida population.
f/ Based on limited EPA survey (Luttner and McWhorter, 1978).
g/ Added to account for possible additional residues in citrus oil (Reed, 1978).

TABLE 7

CHLOROBENZILATE

POTENTIAL CANCER RISK THROUGH DIETARY EXPOSURE

FLORIDA POPULATION (8,000,000)

	Maximum[a] Lifetime Probability of Tumor Formation (Less Than)	Maximum[b] Mathematical Expectation of Numbers of Tumors During a Lifetime (Less Than)
One-hit Model (NCI Data)[c]		
Observed	0.6 to 1.3 in 1 million	5 to 10
One-hit Model (Innes Data)[d]		
Observed[e]	3.1 to 7.0 in 1 million	25 to 56

a/ Assumes that dietary exposure occurs at the level of exposure expressed as reasonable upper limit (0.0025 to 0.0061 ppm daily throughout lifetime), and model projects conservative expression of risk.

b/ Since the animal study was conducted throughout lifetime exposure, the chance of cancer occurrence is extrapolated as the potential of a cancer event during a lifetime, and should, therefore, be interpreted as an index or "mathematical" expectation rather than a "clinical" expectation.

c/ In addition to normal spontaneous rate; estimate based on NCI study male mice with hepatocellular carcinomas [32 out of 48 (treated), 4 out of 19 (controls)] (Albert, 1978b).

d/ In addition to normal spontaneous rate; estimate based on Innes study "Strain X" male mice with hepatomas [9 out of 17 (treated), 8 out of 79 (controls)] (Albert, 1978).

e/ Estimate used.

TABLE 8

CHLOROBENZILATE

POTENTIAL CANCER RISK THROUGH DIETARY EXPOSURE

U.S. POPULATION (EXCEPT FLORIDA) (212,000,000)

	Maximum[a/] Lifetime Probability of Tumor Formation (Less Than)	Maximum[b/] Mathematical Expectation of Numbers of Tumors During a Lifetime (Less Than)
One-hit Model (NCI Data)[c/]		
Observed	0.5 in 1 million	106
One-hit Model (Innes Data)[d/]		
Observed[e/]	2.6 in 1 million	551

a/ Assumes that dietary exposure occurs at the level of exposure expressed as reasonable upper limit (0.0025 to 0.0061 ppm daily throughout lifetime), and model projects conservative expression of risk.

b/ Since the animal study was conducted throughout lifetime exposure, the chance of cancer occurrence is extrapolated as the potential of a cancer event during a lifetime, and should, therefore, be interpreted as an index or "mathematical" expectation rather than a "clinical" expectation.

c/ In addition to normal spontaneous rate; estimate based on NCI study male mice with hepatocellular carcinomas [32 out of 48 (treated); 4 out of 19 (controls)] (Albert, 1978b).

d/ In addition to normal spontaneous rate; estimate based on Innes study "Strain X" male mice with hepatomas [9 out of 17 (treated); 8 out of 79 (controls)] (Albert, 1978).

e/ Estimate used.

[6560-01-M]

3. *Testicular Effects.* The presumption against chlorobenzilate was based on the risk of oncogenic effects. However, in re-evaluating long-term chlorobenzilate feeding studies in connection with the RPAR review, the Agency concluded that the data on testicular effects also required consideration. Upon re-examination, the Agency found that testicular toxicity in rats had been reported in five studies. In Position Document 3 [Section II(A)(3)], the Agency analyzed the risk of testicular effects associated with chlorobenzilate.

The Agency received a letter from a registrant on June 22, 1978, which contained raw data and an additional statistical analysis which he claimed proved that the reproductive performance of the rats in the Woodard (1965) three-generation reproduction study was not impaired. The Agency issued Position Document 3 on June 30, 1978, and this information was too late to be considered in that document. During the comment period after Position Document 3 was issued, the registrant [40 (30000/3D)] re-stated his statements of June 22nd, and the Agency has now analyzed this information.

In this study, Woodard fed rats 50 ppm chlorobenzilate and subsequent generations 25 or 50 ppm chlorobenzilate. Initially, significantly-reduced mean testicular weights were reported using the Rank Sum Test of Wilcoxon. In 1966, an FDA reviewer [1] said that the reproductive performance of test and control rats was essentially the same. She observed, however, that there could be a difference in the two groups, because of possible diminished testes weights in the first generation of treated males. The reviewer recommended that the question of whether or not the decrease in testicular weights was significant could be resolved by further statistical analysis. In the letter of June 22nd, the registrant noted that the testicular weights of one animal in the group given 50 ppm chlorobenzilate was more than five standard deviations from the group mean. The registrant therefore eliminated the testicular weights of that animal from subsequent analysis. The decrease in testicular weights was then found to be insignificant by one-way analysis of variance and Fischer's Least Squares Difference tests.

Although the registrant's statistical approach changes the analysis for this study, it does not alter the fact that adverse testicular effects have been regularly observed in animals which received chlorobenzilate at high doses in four other studies discussed in Position Document 3. For this reason, the Agency continues to be concerned about the reproductive effects of chlorobenzilate. Accordingly, the Agency will require the registrants to perform a three-generation reproduction study with appropriate protocol as discussed under Section C(4) of this document.

B. COMMENTS RELATING TO BENEFITS

The Agency's analysis of the benefits associated with chlorobenzilate was presented in Position Document 3 (pp. 39-67). The Agency invited information on the economic, social, and environmental benefits of the pesticide during the rebuttal period, and this information was included in the Chlorobenzilate Benefit Analysis in Position Document 3. The USDA also aided the Agency in a joint effort to develop information on the benefits of the ongoing uses of chlorobenzilate. Several commenters raised questions on the benefits information. This Section also contains new information that has become available since the publication of Position Document 3.

1. *General.* One commenter [50 (30000/3)] wrote, "Concerning chlorobenzilate, there were two major problems with the benefit data. First, it was incomplete * * *."

The chlorobenzilate benefits assessment team (BAT) [2] used only the most current and relevant data which was available to them when they prepared their 1977 report. The BAT was aware of the references cited by this commenter, even though not all of these references were discussed or referenced specifically in the BAT report. The information presented by the commenter either supports the Agency's position or is not the most relevant, current, or accurate data available on the subject (Knapp, 1978a).

This commenter [50 (30000/3)] continued:

The second deficiency of the chlorobenzilate benefit data was the use of the Allen paper itself. * * * Incidentally, grapefruit were not mentioned in the Allen paper, but a 17% yield loss of grapefruit was attributed to the Allen paper. Where did the number come from?

The actual objection to Allen's paper is not clear. Jon Allen is a leading expert doing research on how mites damage citrus fruit, foliage, trees, and groves. His results are the most precise and timely available, and his work includes both oranges and grapefruit. Additional data regarding yield are discussed in Section II (4)(a) of this document.

2. *Alternatives.*—a. *Dicofol.* One commenter [39 (30000/3D)] disagreed with the Agency's conclusion that dicofol was not a satisfactory alternative to chlorobenzilate. He first questioned the Agency's representation of the problem of controlling snow scale when dicofol is used as a miticide. Specifically, Position Document 3 stated that, "If dicofol is used in groves infested with snow scale (approximately 75% of Florida groves) the snow scale populations increase, causing serious infestation and necessitating the use of scalicides (Florida Cooperative Extensive Service, 1977)," and "Growers using dicofol in place of chlorobenzilate in groves infested with snow scale would need to supplement dicofol applications with scalicide applications."

The phenomenon of dicofol's effect upon snow scale populations (rapid increases after application in groves where this pest is present) is well documented in the literature (Brooks and Whitney, 1976). Application of dicofol for mite control when snow scale are also present in the grove necessitates the concurrent use of a scalicide, many of which have a negative effect upon beneficial insect populations.

The commenter supplied data which indicate that the effect of dicofol on snow scale is seasonal. These data show that dicofol can be used during the spring and fall without increasing snow scale, but that during the summer growers would need to supplement dicofol with scalicides in groves infested with snow scale. Although the Agency recognizes this seasonal variation effect, it does not alter the chlorobenzilate benefit analysis, because that analysis was based on the use of chlorobenzilate during the summer when growers could not use dicofol alone (Luttner, 1978a; Knapp, 1978b).

Secondly, the commenter [39 (30000/3D)] questioned the Agency's statements on the oncogenic effects of dicofol (Position Document 3, Appendix C). The Agency's statements on dicofol's oncogenicity were based on preliminary results of an NCI study in which dicofol reportedly induced hepatocellular carcinomas in male mice. This commenter questioned the validity of the dicofol bioassay as follows:

* * * according to the NCI Clearinghouse on Environmental Carcinogens, the stability of the sample of dicofol fed the animals in the NCI studies was not maintained throughout the study so that it is unclear what the animals were fed. Therefore, the Clearinghouse has indicated that the NCI studies prohibit drawing any conclusions concerning dicofol carcinogenicity.

The Agency's Carcinogen Assessment Group (CAG) did not agree that this problem invalidated the NCI study for several reasons. First, the NCI increased the amount of dicofol which they fed to the animals during the latter part of the study, perhaps to compensate for the degradation of the initial dose of the chemical. Second, the Agency has no information about the stability of this compound when it is actually applied to citrus crops; it is possible that decomposition of the compound during the NCI bioassay parallels that in the field. Thus, it is immaterial whether the male mice responded to the parent compound or its decomposition products since exposure to both is expected. Finally, participants in the Clearinghouse Meeting stated that hepatocellular carcinoma among treated mice was 74% in the high dose group and 44% in the low dose group, as compared to 25% in historic controls and 17% in experimental controls. The CAG believes that this is a statistically significant induction of hepatocellular carcinoma, and therefore sufficient to conclude that dicofol is carcinogenic in male mice (Albert, 1978).

b. *Hirsutella and Diflubenzuron.* One commenter [42 (30000/3D)] asked by the Agency had not evaluated two alternatives for chlorobenzilate (diflubenzuron and *Hirsutella*) which they termed "promising." The Agency reviewed these potential alternatives before issuing Position Document 3 (McWhorter, 1978d) and agrees that these are promising. However, neither diflubenzuron or *Hirsutella* is currently registered as a citrus miticide, and their effectiveness on citrus crops as well as the potential risks associated with these uses have not yet been fully evaluated.

3. *Need for Miticides.* Several commenters questioned the need for miticides, especially for the large percentage of citrus fruit which is destined for the process market. Two respondents disputed the Agency's position that mites need to be controlled because they affect fruit size, appearance, crop yield, and tree stock stamina (Position Document 3, p. 44). For example, one commenter [42 (30000/3D)] suggested that chlorobenzilate does not need to be used on citrus fruit which is to be processed, and that the Agency should have considered cancelling the use of chlorobenzilate on all citrus fruit intended for processing.

[1] This division of FDA became part of the EPA when the Agency was established in 1970.

[2] The BAT consisted of USDA and State extension and research personnel.

Another commenter [50 (30000/3)] asserted that mites affect the appearance of citrus fruit and that this is merely a cosmetic effect rather than a substantive effect such as a change in yield. The commenter concluded that the Agency's benefit analysis overestimated the economic benefit derived from the use of chlorobenzilate on citrus crops, leading the Agency to continue registrations of chlorobenzilate on citrus fruit rather than cancelling them. This commenter implied that it may not be necessary for growers to treat citrus crops for mites at all.

a. *Yield Effects of Rust Mite Damage.* One commenter [50 (30000/3)] noted, "One would expect citrus rust mite damage to be of less importance to the processor, as it affects only the appearance of the fruit." However, information available to the Agency contradicts the assertion that rust mite damage affects only the appearance of the fruit. Several researchers have evaluated the impact of citrus rust mites on citrus production and found that, in addition to harming the appearance of the fruit, citrus mites have other adverse effects upon both citrus trees and fruit, including lower yields due to increased fruit drop and decreased fruit size; leaf drop; damage to leaves and young shoots; and increased fruit transpiration rates both on the tree and when the fruit is in the marketing process (Yothers and Mason, 1930; Spencer and Osburn, 1950; Albrigo and McCoy, 1974; Yothers, 1918; Pratt, 1958). For example, a recent study showed that mite damage reduces tree longevity: of 4,692 Florida orange trees lost due to insect damage in 1977, 1,753 trees (or 36%) were lost due to rust mite damage (Doane Agricultural Service, Inc., 1978).

The most significant research to date on the nature and extent that yield is affected by citrus mites is that of Allen (1978a, 1978c) and Allen and Stamper (1978), which has become available since Position Document 3 was published. Allen was the first to use quantitative methods to determine the degree to which rust mites reduce yields by causing fruit to drop from the trees and by reducing fruit size given specific levels of mite infestation. Allen's fruit drop work has demonstrated that citrus fruit damaged by rust mites tends to lose water more rapidly than undamaged fruit, and damaged fruit also has a lower bonding force to the tree. Four different studies have shown that fruit which has been damaged by rust mites is more likely to drop from the tree prematurely than will undamaged fruit (Allen, 1978a).

Effects on fruit growth similar to those found by Allen were described by Tono et al. (1978). These authors found that the citrus rust mite reduced the diameter, volume, and weight of Satsuma mandarin oranges when compared to undamaged fruit. Allen concluded that, "since the data of Tono et al. (1978) for a different rust mite attacking a different citrus species is very similar to the present study, the effects of citrus rust mite on other citrus varieties are probably similar to that reported here" (Allen, 1978c).

Allen has very recently developed a simulation model to predict yield loss based on mite densities, control timing, and different control strategies (Allen, 1978c). Allen's recent data concerning the relationship between yield effects and the fruit surface area which is damaged by mites indicate that, in the absence of treatment for mites, growers can expect fruit surface area damage (russetting) ranging from a low of 10% to a high of 50%. Allen's new data for oranges and grapefruit show the following yield effects at these damage levels: [3]

Surface area damage (pct)	Volume loss (pct) (includes drop plus size reduction)	Reduction insoluble solids (pct)
10 (Low)	4.38	3.53
30 (Med)	13.61	11.00
50 (High)	23.89	19.33

These volume loss data provide new support for the Agency's earlier estimates of 21.2% (oranges) and 25.3% (grapefruit) at the 50% damage level and 11.6% (oranges) and 14.0% (grapefruit) at the 30% damage level (Luttner, 1978c). Allen's new data also include figures on the reduction of soluble solids, an economic loss which was not known and therefore not included in the Agency's earlier analyses, and which indicates another benefit of controlling citrus mites.

To support his contention that mites damage only the appearance of citrus fruit, this commenter [50 (30000/3)] quoted several sources, including Griffiths and Thompson (1953), Reinking (1967), Simanton (1962), McCoy et al. (1967a), Ziegler and Wolfe (1975), Townsend (1976), and Olmert and Kenneth (1974). The Agency does not agree with his interpretation of the conclusions of some of these sources, while the results of others were taken out of context. In addition, one source did not deal with chlorobenzilate at all, while another was strictly a laboratory and not a field test.

Most importantly, the performance of chlorobenzilate was not evaluated in most of the studies cited. Further, the data presented by the commenter as Table 4 (reproduced on the following page) appear to be very misleading. "Significance" was apparently assigned in most instances by the commenter and not by the authorities who generated the data. The problems associated with using Griffiths and Thompson (1953), Reinking (1967), and Simanton (1962) as sources have already been discussed, and are discussed in detail in Ludvik (1978). The McCoy et al. (1967a) reference must not have been read correctly. These authors clearly show that on the average for a four-year period, yields measured as "mean pounds solids/year" were 3,986.2, 3,887.1, and 3,499.5 pounds for conventional, integrated, and no-spray programs, respectively. The first two did not differ significantly, but the third did differ significantly from the other two. The commenter cited 3,896 and 3,500 pounds as "NS" and thus ignored a major thrust of the research described, namely, comparison of a "complete" and an integrated spray program with a no-spray program. For purposes of this discussion, the Agency is primarily concerned with the Commenter's use and interpretation of the data, rather than with the data as generated and analyzed by the several authors.

The Agency concludes that there are yield effects associated with rust mite infestations. However, the benefit analysis is insensitive to the level of such damage, because no yield benefits were claimed for chlorobenzilate over substitute miticides which would be used to replace it.

[3] These data reflect mite damage on June 1 and harvest on April 1 for Valencia oranges; June 1 damage and March 1 harvest for grapefruit. Both situations are typical for Florida (Allen, 1979). Allen's analysis (for oranges) projects these relationships over a range of 1% to 80% surface area damage (0.5% to 42.3% volume loss, respectively.

NOTE: This table is reproduced from the submission of commenter 50 (30000/3).

TABLE 4

YIELDS OF CITRUS IN SPRAYED AND UNSPRAYED PLOTS

State	Crop	Yield		Significance 1/	Source
		Spray	No Spray		
Florida	Valencia Oranges	2.9 boxes/tree	2.9 boxes/tree	NS	Griffiths & Thompson (1953)
Florida	Seedy Grapefruit	10.0 ave. - 13.4 expct. ave. of boxes/tree	8.7 Ave.-10.8 expct. ave. of boxes/tree	NS	Griffiths & Thompson (1953)
Texas	Oranges	126 lbs/tree	123 lbs/tree	NS	Reinking (1967)
Texas	Grapefruit	372 lbs/tree	285 lbs/tree	NS	Reinking (1967)
Florida	Oranges	201 boxes/acre	201 boxes/acre	NS	Simanton (1962)
Florida	Grapefruit	307 boxes/acre	245 boxes/acre	?	Simanton (1962)
Florida	Tangerine	310 boxes/acre	310 boxes/acre	NS	Simanton (1962)
Florida	Oranges	3,896 lbs solid/acre	3,500 lbs solid/acre 2/	NS	McCoy et al. (1976) 3/

1/ Mite infestation due to yield reduction.
2/ Lower yield caused by greasy spot fungus infestations.
3/ McCoy et al. (1976a).

[6560-01-M]

b. *Economic Importance of Russetting.* A commenter [50 (30000/3D)] also implied that miticides are unnecessary in citrus production, because there are no marketing incentives to avoid mite damage. Aside from the effects on yield, the russetting factor is economically important, because russetted fruit commands a lower price in the fresh market for citrus fruit; russetted fruit commands a lower price because American consumers prefer non-russetted citrus fruit, a preference that is reflected in the USDA grading system. These fresh market sales provide significant revenues to citrus growers in all States, and are especially important for certain crops in Arizona, California, and Texas, where volume sales of both oranges and grapefruit in the fresh market exceeded volume sales of these crops in the process market during 1977–1978 (U.S. Department of Agriculture, 1978). Therefore, growers plan to sell as much of their fruit as possible to the fresh market. However, because growers cannot predict during the growing season how much of their fruit they will be able to sell to the fresh market, they tend to treat their fruit with miticides in order to maximize their sales potential in the fresh market.

This commenter [50 (30000/3)] disagreed with the conclusion that bright, undamaged fruit command higher prices: "Another point that was missed is that russetted grapefruit sell for a premium price on some markets. All this information is in the literature."

The actual and complete quotation from Ziegler and Wolfe (1975) is:

"Russetted fruit is just as good to eat as bright fruit, and some markets even pay a premium for it, although it is unusually discounted somewhat for poor external appearance and may not keep as long." Ziegler and Wolfe (1975) did not cite references to support their statement, identify locations, or indicate the magnitude of sales or the percentage of the total market involved, yet this commenter presented their statement in a manner which suggested that a major segment of the citrus market had been ignored in the Agency's analysis. The Agency has since verified that such a market does exist. It is a limited local specialty market which, according to Wardowski (1978) accounted for the sale of 0.83%, 0.02%, and 0.03% of the fresh grapefruit, oranges, and tangerines, respectively, in Florida in 1976–1977. Wardowski (1978) also commented that "the contention [50 (30000/3)] that russetted grades of grapefruit command higher prices is seldom correct." He also said that, based on the *Annual Statistical Record, 1977–1978 Season*, by the Citrus Administrative Committee, the average prices for russetted grades of grapefruit for the 1977–1978 season are appreciably lower than for better looking fruit. There are occasional exceptions when russetted grades command higher prices, as for example the Indian River white seedless grapefruit sold during the week ending June 18, 1978. However, no one could sell those grades for premium prices on the season-long average; such a specialty market is very 'price elastic'[4], and an extra carload or two could well break the market (Wardowski, 1978).

In addition, commenters recognized that processors often pay less for marked fruit, even though one would think cosmetic appearance would be of little or no consequence to them. Internal quality is of greater importance to the processor than external appearance, but when the crop is large and the fresh fruit market slow, the processor tends to discount fruit for external quality even though the lower grade fruit is fully as satisfactory for his use.

The Agency concludes that russetted fruit is less valuable in the fresh market and even in the process market. Apart from any other losses in quantity or quality (e.g., reduction in soluble solids), russetting causes economic damage. It is economic damage to the grower if he receives a lower price for a crate of russetted fruit, regardless of whether he suffered a loss in yield, i.e., he got fewer crates from the grove.

4. *Value in IPM Programs.* Two commenters (40, 50 (30000/3D)] questioned the Agency's position that chlorobenzilate is an important component of IPM programs to control the citrus rust mite in citrus groves. As described in Position Document 3, the Agency's position is based in the demonstrated benefits of using integrated chemical and biological pest management (IPM) practices on citrus crops, as in Florida where chlorobenzilate is used to control rust mites in combination with parasitic wasps which were introduced to control the scale insects endogenous to Florida citrus groves. Initially, a parasitic wasp release program was instituted in Florida during the 1950's to control scale insect infestations, and this program established parasite populations which control purple and red scale throughout the entire State. In 1973, the University of Florida began a Federally-funded demonstration IPM program involving chlorobenzilate and the parasitic wasps. This program has shown growers throughout the State that using chlorobenzilate in IPM programs controls the rust mite without harming the parasitic wasp populations. Currently, biological scale control efforts are directed at release and establishment of a third wasp species to control snow scale (Brooks, 1977). Current data (Doane Agricultural Service, Inc., 1978)[5] which indicates that at least as much chlorobenzilate is now being used as was reported in the 1975 data on which the Benefits Analysis was based, reflect the success of this IPM program.

An important dimension of IPM in Florida has been the reduced need for chemical control of scale insects. Prior to the introduction of two *Aphytis* species, purple and Florida red scales were ranked as the first and fourth most important pests of Florida citrus, respectively (Thompson, 1955). However, ". . . spectacular successes of biological control of Florida red scale, *Chrysomphalus aonidum* (L.), and purple scale, *Lepidosaphes beckii* (Newm.), have reduced the need for multiple applications of organic phosphate insecticides" (McCoy et al., 1976b). The program to establish scale parasites was so successful that, at present, both insects are considered to be minor pests (Brooks, 1977). Both red and purple scale can still be found at very low levels in most Florida citrus groves and are generally only serious where parasite development has been retarded (Brooks, 1977). The maintenance of scale parasite populations represents a very significant IPM consideration throughout Florida's citrus-growing areas.

In California, chlorobenzilate is by far the most effective material for control of citrus bud mite on lemons. It is estimated that, without chlorobenzilate, one petroleum spray would be required on all of the southern California lemon acreage, and two petroleum oil sprays would be required on two-thirds of the acreage each year. As a consequence of using chlorobenzilate, only a fraction of this acreage needs to be treated each year. The use of chlorobenzilate in Florida and Texas, primarily to control the citrus rust mite, has been one of the key factors enabling growers in these States to significantly reduce the total number of pesticide treatments applied each year. Chlorobenzilate provides excellent rust mite control without the phytotoxic properties of petroleum oil during periods of stress to the trees and with little or none of the reductions in populations of important beneficial insects which the nonselective alternatives cause.

5. *Variability of Actual Benefits.* In the previous sections, a number of commenters raised issues relating to the Agency's analysis of benefits. While each of these issues were discussed individually, as a group they implied that the Agency had overestimated the economic impact of cancelling chlorobenzilate. This general concern is discussed below.

The Benefit Analysis projected that cancelling the use of chlorobenzilate on citrus crops would cost approximately $13.1 million the first year after cancellation and increase to $57.6 million by the fifth year. These projections were based on the recent use patterns for chlorobenzilate, the dynamics and interelationships between pests and beneficial insects in citrus groves, and the impacts which might reasonably be expected to occur if substitute pesticides were used to control the rust mite. Although Position Document 3 stated that these projections are based on a number of variables and assumptions and that the projected cost totals are maximum values, the commenters have apparently interpreted the projections as precise impacts. This misunderstanding might have been avoided if the discussion had indicated a range of possible impacts rather than reporting point estimates.

It is possible that in any given year the loss of chlorobenzilate on citrus fruit would result in no economic impacts other than the higher replacement costs for alternative miticides (about $3 million per year). However, this could occur only if infestations of scale insects did not materialize in the absence of scale parasites, thus making it unnecessary to treat the groves to control scale insects. In view of the fact that purple and red scale now exist at generally sub-economic levels throughout the State (and that snow scale also infest about 75% of Florida's citrus acreage), and given the toxicity of certain of the major alternative miticides to scale parasites, the Agency considers the likelihood of such an occurrence to be extremely unlikely. It is inappropriate to assume a constant need for additional scale control treatments on all of the Florida citrus acreage, since scale populations could reasonably be expected to vary by year as well as by area. The same argument also ap-

[4]The price is very sensitive to changes in supply.

[5]This new data, which has just become available to the Agency, indicates that more chlorobenzilate is now being used. This could increase both the risks and benefits associated with the citrus uses of chlorobenzilate. However, the Agency did not receive this information in time to evaluate it and correspondingly revise both the risk and benefits estimates.

plies to the projected need for added mite control treatments on additional acres of lemons in California if chlorobenzilate is unavailable.

The Agency has reviewed the incidence of economic infestations of red and purple scale in the citrus-growing States during 1975 and more recent years (Doane Agricultural Service, Inc., 1976, 1978) and the incidence of use of multiple applications of organophosphates which are harmful to scale insect predators and has found that a relationship appears to exist. The more such chemicals are used (including insecticides as well as miticides), the more treatments will be required for red and purple and unspecified scale insect problems.

There is no precise methodology or logic which the Agency can use to assign probabilities to the many outcomes which could ensue if chlorobenzilate were cancelled. Keeping in mind that red and purple scale insects are presently an economic problem for a number of growers and that low levels of infestation exist on most of the acreage, it is reasonable to project that most of the citrus acreage could easily be infested by red and purple scales which would require treatment if the existing parasites were killed because growers were using miticides other than chlorobenzilate.

In view of the numerous biological, environmental, and economic factors involved in projecting economic impacts, the projection of such impacts is necessarily judgmental. The Agency's conclusion is that, quite clearly, the upper limit of economic impacts on citrus could occur in a given year ($57 million). In any given year, the particular combination of environmental and economic variables will cause this projection to vary. While the Agency recognizes the probabilistic nature of the conclusions of the benefit analysis, it is confident that the economic benefits of using chlorobenzilate on citrus crops are substantial and that the range of variability in the projected impact of cancelling the citrus uses of chlorobenzilate would not be of sufficient magnitude to change the Agency's regulatory decision.

C. COMMENTS RELATING TO REGULATORY OPTIONS

1. *Non-Citrus Uses.* In Position Document 3, the Agency recommended cancelling all non-citrus uses of chlorobenzilate, because: 1) chlorobenzilate poses a risk of cancer and adverse testicular effects to humans, and 2) no benefits would be lost, since effective alternatives are registered for each of the non-citrus uses of chlorobenzilate. In some cases these alternatives are less expensive than chlorobenzilate and achieve comparable levels of control.

The Secretary of Agriculture [36 (30000/3)] recommended that the Agency continue the registrations for chlorobenzilate use on cherries, walnuts, melons, almonds, cotton, certain ornamentals, and outdoor areas.

The Secretary stated:

"In view of the relatively small amount of chlorobenzilate used on these crops and, thus, the correspondingly small risk associated with these uses, the Department recommends that these registrations be continued while biological and economic data are obtained in order to better determine the complete risk/benefit situation. A requirement for accomplishing this during the same 18-month period allowed for collecting additional exposure data on the citrus uses should be included in the final determination.

The SAP also recommended that the Agency continue all non-citrus uses. Specifically, the Panel stated:

"The Scientific Advisory Panel believes the registration for chlorobenzilate on non-citrus crops and ornamentals should continue on the same basis as for citrus crops. In this regard, the proposed studies concerning residues in food crops, applicator exposure, aerial application exposure, etc., required in Option F for citrus crops should also be required for non-citrus crops. The Scientific Advisory Panel believes the continued use of chlorobenzilate on non-citrus crops is justified on the basis of the fact that alternative pesticides may pose a greater potential health threat than chlorobenzilate."

Another commenter [42 (30000/3D)] agreed with the Agency's decision to cancel all non-citrus uses, but disagreed with the decision to allow citrus uses to continue.

The recommendation to cancel the non-citrus uses of chlorobenzilate was based in part on the results of USDA's questionnaire to all State Pesticide Impact Assessment Liaison Coordinators concerning the value of these uses. Except for one comment that chlorobenzilate is important in controlling clover mites around buildings (Allen, George E., 1978), that questionnaire elicited no information on benefits of the non-citrus uses. Therefore, the Agency considered this a confirmation of its preliminary conclusion that no appreciable benefits were associated with these uses.

It is true, as the USDA noted, that a relatively small amount of chlorobenzilate is used on these crops, and that there is a correspondingly small risk. However, neither the USDA nor the SAP submitted any additional information to suggest that there are benefits to be gained from these uses of chlorobenzilate or that the benefits exceed the risk. Moreover, many alternative pesticides are available for the non-citrus uses, and, based upon currently available toxicology data, several appear to be less hazardous than chlorobenzilate. These alternatives are listed in Table 14 of Position Document 3. Therefore, neither registrants, the USDA, nor the SAP have provided information to justify the risk associated with the continued use of chlorobenzilate on these non-citrus crops.

2. *Use of Chlorobenzilate on Citrus Crops in Arizona.* Although the Agency decided to continue registrations of chlorobenzilate use on citrus crops in Florida, Texas, and California (with amended terms and conditions of registration, including a requirement to submit specific exposure data within 18 months), the Agency recommended that chlorobenzilate use be cancelled on citrus crops in Arizona.

The Secretary of Agriculture and the SAP [36, 45 (30000/3)] both recommended that chlorobenzilate registrations be continued for citrus crops in Arizona. The SAP stated that all States should be permitted to use chlorobenzilate on citrus fruit, because the data which the Agency presented was inadequate to justify excluding any State. The USDA explained that, "The benefits of chlorobenzilate use in (Arizona) citrus production are greater than originally perceived," and, "A benefit analysis for Arizona citrus should be developed and evaluated." In addition, several other commenters [40, 46, 38, 41, 47, 48, 44, and 51 (30000/3)] objected to cancelling chlorobenzilate use on citrus fruit in Arizona, but generally provided no data supporting these opinions.

In 1976, the USDA surveyed various pesticide officials in citrus-producing States, including Arizona, to determine their need for chlorobenzilate, but Arizona pesticide officials did not respond. USDA supplied the results of that survey (Riley, 1976) to the Agency. Since Arizona had provided no information, the Agency concluded in Position Document 3 that chlorobenzilate was not regarded as useful or important by Arizona.

After discussing this issue with the SAP, the Agency requested additional data from the USDA that might support their claim that chlorobenzilate is needed in Arizona (Boyd, 1978a). As a result, officials from the University of Arizona [47, 48 (30000/3)] provided the Agency with information which included the results of field trials on the comparative usefulness of various miticides, statements on possible mite resistance to dicofol, and data on reduction of beneficial arthropod populations due to miticides other than chlorobenzilate. Further, the University of Arizona noted that an acarologist and a citrus entomologist are developing integrated control programs for Arizona which include chlorobenzilate.

As stated in Position Document 3, the use of alternatives to chlorobenzilate may disrupt IPM strategies in Arizona. The Agency observed that although the extent of natural controls is unknown, the generic selectivity of chlorobenzilate would make its use compatible with the endemic arthropod parasites and predators in Arizona.

The possible disruption of IPM strategies, when considered with Arizona's recent activities, stated intentions, and willingness to research and develop integrated programs which use chlorobenzilate in conjunction with existing biological controls, justifies the continued availability of chlorobenzilate for use on citrus crops in Arizona.

In view of the information now available, the Agency has determined that the risk of using chlorobenzilate on citrus crops in Arizona is outweighed by the associated benefits. The registration of chlorobenzilate for use in Arizona is therefore continued under the same terms and conditions of registration specified for California, Florida, and Texas.

3. *Use of Citrus Pulp As Cattle Feed.* One commenter [42 (30000/3D)] disagreed with the Agency's decision to allow pulp from citrus fruit which had been treated with chlorobenzilate to continue to be used as cattle feed, arguing that the "pulp feed use is hazardous exposure and should not be continued until there are better data." This commenter took issue with the Agency's position that prohibiting chlorobenzilate residues in citrus pulp would amount to a *de facto* cancellation. It is logical to assume that if the processors could not sell pulp from chlorobenzilate-treated citrus fruit, they would refuse to accept fruit treated with chlorobenzilate. Since over 80% of Florida citrus fruit is processed, if growers stopped using chlorobenzilate for this reason, a prohibition on the sale of chlorobenzilate-treated pulp may amount to a *de facto* cancellation.

The studies which the Agency is requiring will determine whether or not there are significant chlorobenzilate residues in meat and milk as a result of feeding pulp from treated fruit to the cattle. If significant resi-

dues are found, the Agency will re-evaluate its position on the pulp feed issue.

This group [42 (30000/3D)] also noted, "There is no tolerance set for chlorobenzilate residues in citrus pulp."

There are currently chlorobenzilate tolerances on citrus fruit at 5 ppm and on meat, fat, and meat by-products of cattle and sheep at 0.5 ppm. An additional tolerance would be required on pulp used as animal feed only if the concentration of chlorobenzilate in citrus pulp exceeds the 5 ppm permitted on citrus fruit. This can be determined when the required residue data are submitted.

At the present time, there is no tolerance for chlorobenzilate in milk. Therefor, any detectable residue of chlorobenzilate would make the milk subject to seizure by the Food and Drug Administration (FDA). Such detectable residues (> 0.01 ppm) are not likely, based on the current data (Reed, 1978), but the results of the required residue studies should clarify this. The citrus fractionation study and the citrus by-product monitoring data which the Agency is requiring will also enable the Agency to more realistically and accurately assess the potential amount of dietary exposure from citrus oil, as discussed in Section II (A)(2)(c), as well as other sources. In any case, seizure at levels above detection level is as conservative and safe a posture as can be taken, short of prohibiting feeding of treated pulp. Maintaining the status quo is as effective in this case as establishing a tolerance.

4. *Additional Studies.* As a condition of continued registration, the Agency will require additional studies to be performed within an 18-month period. One commenter [42 (30000/3D)] argued that the Agency should require the results of the following studies to be submitted before making a regulatory decision: exposure studies on citrus pickers and applicators; residue monitoring studies on citrus pulp, milk, and meat; and studies on metabolism, degradation, and environmental fate. This commenter noted that the exposure studies which the Agency will require within 18 months "could indicate a very significant adverse human reproductive effect." Therefore, the results of these studies "should precede the decision to continue uses," instead of following it.

The RPAR process is not intended to fill all data gaps which are found to occur with respect to a chemical. However, the Agency may require registrants to conduct studies on metabolism, degration, and persistence or other effects as a condition of registration. In the case of chlorobenzilate, the Agency will require the exposure studies and residue monitoring studies described in Position Document 3 as a condition of continued registration and will use the results of these studies to reassess the risk associated with using chlorobenzilate.

This commenter also objected to the fact that the registrant(s) rather than someone else will conduct the exposure studies which the Agency is requiring. FIFRA gives the Agency authority to require registrants to conduct all studies in support of pesticide registrations. Although the Agency may itself conduct studies to develop pesticide hazard and exposure data, data of this type is generally provided by registrants.

This commenter also objected that data on chlorobenzilate residues in citrus pulp as well as the plans and protocols for the new studies which the Agency is requiring were all secret. Most of the data on which the analyses in Position Documents 3 and 4 are based is available to the public in the position documents themselves, in the references, or in other supporting documents in the official RPAR file on chlorobenzilate. In addition, copies of attachments to these position documents which were not published with the notice of determination are available in the public file that the Special Pesticide Review Division maintains for each RPAR pesticide. Information protected from disclosure pursuant to Section 10 of FIFRA cannot be provided.

The SAP [45 (30000/3)] recommended that, "Due to the lack of information on the potential adverse effects of chlorobenzilate on human reproduction, we recommend the following studies:

(a) The examination of sperm counts in a selected population of chlorobenzilate applicators, and

(b) A three-generation reproductive study in rats at sufficient dose levels to allow the determination of a no-adverse-effect level of chlorobenzilate on reproduction in that species. This study should be carried out using the protocol currently described in the proposal EPA guidelines for risk assessment of FIFRA chemicals."

The Agency agrees with the SAP that a three-generation reproduction study would be worthwhile, and will require the registrants to conduct such a study according to the protocol described in the proposed EPA guidelines for hazard assessment (43 FR 163:37384-37385, August 22, 1978).

The SAP's recommendation that sperm counts in applicators be examined will be considered again when data from the animal studies become available (Gardner, 1979). If data from the reproduction study suggest that human applicators should also be studied, applicator sperm counts may then be required.

5. *Reducing Occupational Risks*—a. *Risk to Applicators.* The Agency found in Position Document 3 that spray applicators are the population at greatest risk as a result of applying chlorobenzilate on citrus fruit. The Agency proposed steps to reduce their exposure by amending the terms and conditions of registration so that chlorobenzilate may be applied only by certified applicators. Further, ground applicators would have to use either protective clothing and a respirator or a suitably-equipped enclosed cab. In addition, as a condition of registration, the Agency is requiring that the registrant submit additional data which can be used to further assess exposure to applicators.

The Secretary of Agriculture and several other respondents commented on the Agency's recommendations to reduce the risk to applicators. The USDA [36 (30000/3)] offered to assist the Agency and the registrants in developing "research protocols for obtaining the necessary dermal and inhalation data on exposure to chlorobenzilate" as well as in evaluating "alternative methods of reducing exposure." Although the final specifications for all required studies must be approved by the EPA, the USDA's assistance will be welcomed in developing studies and evaluating alternative protective measures.

The Secretary of Agriculture agreed with the Agency's decision to allow chlorobenzilate to be applied by certified applicators only, but disagreed with the requirement to specify clothing type or respirator requirements on the label. The Agency originally specified that protective clothing should be made of "jersey", which was intended to describe any finely-woven fabric. The Agency will clarify its clothing requirement as follows: applicators must wear one-piece overalls which have long sleeves and long pants constructed of finely-woven fabric as specified in the USDA/EPA *Guide for Commercial Applicators*, which was cited by USDA. In addition, the Agency will continue to require that applicators wear heavy-duty fabric work gloves and a wide-brimmed hat when applying chlorobenzilate.

Under its requirements for clothing and equipment for applicators, the Agency also stated that, "Any article which has become contaminated must be replaced" (Position Document 3, Appendix D). A commenter [40 (30000/3D)] recommended that this be changed to, "Any article which has become contaminated must be cleaned before reusing."

The Agency will accept this modification; however, clothing worn when applying chlorobenzilate should not be worn again until it has been laundered separately, using a strong detergent and liquid chlorine bleach. If clothing is drenched or exposed to concentrated pesticide, it should be buried or burned.

The Secretary of Agriculture [36 (30000/3)] suggested that the Agency simply encourage ground applicators to wear respirators instead of requiring this on the label. Several other commenters [37, 40 (30000/3D); 43, 47 (30000/3)] also contended that the respirator requirement is impractical or unwarranted and should be deleted from the proposed measures.

While the Agency recognizes that wearing a respirator poses some discomfort and entails frequent maintenance, the respirator provides a significant amount of protection to ground applicators as does the protective clothing. In view of the many comments on this issue, the Agency has recalculated its ground applicator exposure estimates. The revised exposure estimates for ground applicators (Severn, 1978) are based on exposure to forearms, hands, and face (15.8% of the total body surface). Covering the forearms and hands would reduce dermal exposure from between 12 and 40 mg/day, as stated in Position Document 3, to between 4 and 10 mg/day. Face-piece respirators would effectively eliminate exposure by inhalation, estimated at 1 mg/day, and further reduce dermal exposure to the face by 1-3 mg/day. Thus, the total exposure could be reduced to between 2 and 6 mg/day (Severn, 1978).

Using protective clothing and respirators will reduce the estimated lifetime cancer risk to applicators from its current level (400 to 1,400 in one million) to between 65 and 190 in one million. There would also be a greater margin of safety [3] (371 to 1,884 as opposed to 55 to 291 without protective clothing and respirators) from testicular effects (Gardner, 1978). The Agency has concluded that this reduction in risk would tend to outweigh both the minimal cost for the protective clothing and the respirators and any potential discomfort which applicators may encounter during the 18-month period in which the exposure studies are being conducted. Therefore, until the required applicator exposure data are submit-

[3] The margin of safety is the ratio of the no-observed-effect level in test animals to the projected human exposure and is based on the assumption that chlorobenzilate irreversibly affects testes, which represents the worst possible situation.

ted and evaluated, the Agency will require applicators to wear protective clothing, as described in this document, and to use a respirator, as described in Appendix D of Position Document 3. If the new exposure data indicate a lower level of risk, the Agency will reconsider the need for applicators to wear respirators. In addition to these requirements, the general and handling precautions described in Appendix D of Position Document 3 are required.

One commenter [46 (30000/3)], suggested that the tractor canopies which are currently in use reduce applicator exposure more than respirators could. However, the commenter provided no specific data to support this claim, and the Agency cannot assume that the canopy, although already in widespread use, could be used in place of respirators as a means of protection for ground applicators. The ground applicator study will allow the Agency to assess the actual exposure these applicators currently receive and revise its regulatory measures, if indicated.

b. *Risk to Pickers.* Citrus pickers are also occupationally exposed to chlorobenzilate, but the available data was insufficient to estimate their exposure and potential risk. As described in the exposure analysis (Severn, 1978), various data on dislodgable chlorobenzilate residues are available, but this data is not adequate to determine the extent to which pickers absorb such pesticide residues. Since the pickers work in the groves after the pesticide is applied, the Agency assumed that they would be exposed to less chlorobenzilate than the applicators, but the available data does not permit a risk assessment for Florida citrus pickers. In order to obtain the data needed for a risk estimate and perhaps subsequent regulatory action, the Agency is requiring studies to determine whether and to what extent dislodgable chlorobenzilate residues may adhere to pickers. In addition, the Agency will require studies which define the degradation rate of chlorobenzilate under field conditions.

One commenter [42 (30000/3D)] recommended that the Agency require protective measures for citrus pickers during the 18-month data-gathering period, but provided no data to support this recommendation. The Agency did not recommend interim regulatory measures pending new data development because, as indicated above, the data needed for risk assessment was not available.

6. *Comparison of Options D and F.* One group [42 (30000/3D)] disagreed with the Agency's selection of Option F. This group contended that the Agency should have selected Option D, which would have limited chlorobenzilate's availability to five years. It felt that this option would reduce potential lifetime effects, encourage technological innovation, and "reflect a conclusion" that the risks associated with using chlorobenzilate are unacceptable if continued indefinitely.

The Agency feels its decision to request relevant information within 18 months provides an even greater degree of safety than Option D. If the Agency has underestimated the risk, it can take appropriate regulatory action at the end of 18 months when the new information is available. Furthermore, the course being pursued by the Agency in no way discourages development of these alternatives.

This commenter also claimed that rejecting Option D "is contrary to the most recent official Agency actions," particularly the decisions on chlordane/heptachlor and Mirex, where the Agency allowed a period of time in which to develop alternative pest control technologies. The Agency makes every effort to reach informed decisions on each pesticide that it regulates. Because each pesticide may pose unique environmental problems as well as benefits, the Agency's decisions will vary with each particular situation. It is intended that each decision will reflect a balanced consideration of both the specific risks and specific benefits involved. As explained on page 19, alternatives for chlorobenzilate are being developed. The primary difference between these decisions is that the Agency did not view the risk from chlorobenzilate in comparison to its benefits as being as great as the risk from chlordane/heptachlor or Mirex, in comparison to the benefits of those pesticides.

This commenter [42 (30000/3D)] also noted that,

The Agency's selection of Option F is also inexplicable in view of its conclusion that no additional costs will be imposed on consumers unless cancellation results in significant reductions in yield or fruit grade. Due to excess production, stability of the industry and no projection of yield quality effects, growers would absorb any loss (Position Document 3, p. 65).

The Agency does have a mandate to be concerned about grower-level effects as well as consumer effects. This issue is discussed in the "Interim Administrative Procedures for Regulatory Decisions Involving Suspected Carcinogens" (41 FR 102:21403-405, May 25, 1976) and also presented as Appendix I(B) of the May, 1977 "Chlorobenzilate Preliminary Benefit Analysis."

III. Conclusions

After reviewing comments from the Secretary of Agriculture, the Scientific Advisory Panel, and others who commented on the Agency's findings and recommendations concerning chlorobenzilate as set forth in Position Document 3, the Agency has decided to implement Option F, as set forth on page 87 of Position Document 3, with the following modifications:

OPTION F

**Continue Registration of Chlorobenzilate Use on Citrus in Florida, Texas, California, and Arizona.*

The same terms and conditions of registration are now required for Arizona as those for California, Florida, and Texas.

**Amend the Terms and Conditions of Registration*

The Agency will modify its requirements for applicator clothing and equipment in two ways. Where the Agency originally specified that protective clothing should be made of "jersey", the clothing requirement will be changed to one-piece overalls which have long sleeves and long pants constructed of finely-woven fabric as specified in the *USDA/EPA Guide for Commercial Applicators.*

The Agency has also accepted modifications in this section regarding contaminated clothing. This requirement will now read, "Any article which has been worn while applying chlorobenzilate must be cleaned before reusing. Clothing which has been drenched or has otherwise absorbed concentrated pesticide must be buried or burned."

All other requirements for applicator clothing and equipment remain as stated in Position Document 3.

**Require That Identified Exposure Data Be Submitted to EPA in 18 Months; Reevaluate the Use on Citrus After Additional Exposure Data Becomes Available*

In addition to the exposure data required in Position Document 3, a three-generation reproduction study will also be required during the 18-month period. The study is to be conducted according to the protocol described in the proposed EPA guidelines for risk assessment (43 FR 163:37384-37385, August 22, 1978).

**Cancel All Other Uses*

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Appendix A.—USDA and SAP Comments

Department of Agriculture,
Office of the Secretary,
Washington, D.C., August 2, 1978.

Mr. Edwin L. Johnson (WH-566),
Deputy Assistant Administrator for Pesticide Programs, U.S. Environmental Protection Agency, Washington, D.C.

Dear Mr. Johnson: This is the United States Department of Agriculture's response to the Environmental Protection Agency's (EPA) Notice of Determination, pursuant to 40 CFR 162.11(a)(5), concluding the Rebuttable Presumption Against Registration (RPAR) on chlorobenzilate, and EPA's proposed intent to cancel or modify the terms and conditions of registration, pursuant to Section 6(b)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The notice, received on July 3, 1978, indicates EPA is proposing to (a) cancel certain uses of chlorobenzilate; and (b) retain major uses on citrus provided that appropriate changes in labeling are implemented by the registrants.

The U.S. Department of Agriculture and State cooperators, under the National Agricultural Pesticide Impact Assessment Program (NAPIAP), have been pleased to interact with EPA in developing information materials upon which the proposed EPA regulatory action is based. We reached agree-

ment on many important chlorobenzilate issues. Further, we are dedicated to mutual resolution of problems involving actual health risks to the consumer or farm workers. In many instances, the data base needed to accurately estimate potential risks of chlorobenzilate use is limited or not available, and we agree that better information must be obtained as soon as possible. We concur that chlorobenzilate should be classified as a restricted use pesticide and, thus, applied only by or under the supervision of a certified applicator. The issues of concern to the Department relative to the regulatory actions proposed in the Notice of Determination and our recommendations follow:

1. *Citrus uses:* The USDA-State-EPA chlorobenzilate assessment team reached agreement on the benefits of chlorobenzilate use on citrus in Florida, Texas and California. However, recent developments in Arizona indicate that the benefits of chlorobenzilate use in citrus production are greater than originally perceived. Arizona citrus producers have experienced difficulties with the use of the principal miticides that are being used in place of chlorobenzilate. Resistance is developing in some areas and some of these materials cannot be used when temperatures exceed 90 degrees F. In addition, toxicity to bees and other beneficial organisms make them less appropriate for use in integrated pest management programs than chlorobenzilate.

Recommendation: The use of chlorobenzilate on citrus in Arizona, which involves only a small amount of additional material (p. 3— of PD #3), should be continued under the same terms as for Florida, Texas and California. A benefit analysis for Arizona citrus should be developed and evaluated. A requirement for accomplishing this should be included in the final registration determination.

2. *Noncitrus uses:* In September 1977, the Department surveyed NAPIAP State Liaison Representatives to determine the importance of the noncitrus uses of chlorobenzilate. At that time, it appeared that adequate alternative miticides were available for the noncitrus uses of chlorobenzilate. In July 1978, State Liaison Representatives were recontacted to assure that all relevant and recent information is being considered in the decisionmaking process. They indicated the following concerns: More serious resistance to alternative materials; possible loss of alternative pesticides through regulatory action or other means; and not having available miticides with the unique attributes of chlorobenzilate for developing effective integrated pest management systems.

The Department concurs with this reassessment by the State Liaison Representatives and believes continued use of chlorobenzilate for mite control is potentially critical for the following commodities: cherries, walnuts, melons, almonds, cotton, certain ornamental and other outdoor uses. We believe it is desirable to retain these registered uses of chlorobenzilate. We will provide detailed information on the importance of chlorobenzilate for these commodities within the same time frame provided for collecting citrus use exposure data. This action will also make it possible for research and extension workers to continue the evaluation of the most effective and compatible IPM systems for these specialty crops.

Recommendation: In view of the relatively small amount of chlorobenzilate used on these crops and, thus, the correspondingly small risk associated with these uses, the Department recommends that these registrations be continued while biological and economic data are obtained in order to better determine the complete risk/benefit situation. A requirement for accomplishing this during the same 18-month period allowed for collecting additional exposure data on the citrus uses should be included in the final determination.

3. *Occupational Exposure:* No specific data are available on applicator or agricultural worker exposure to chlorobenzilate. The Department agrees that 18 months are needed to collect adequate exposure information on chlorobenzilate.

The Department agrees with the need for protective clothing but believes that the specification of a one piece "Jersey" jumpsuit could pose availability problems. The Department does not concur with the requirement of a face piece respirator because this places an unreasonable burden on the applicator. Under hot and humid climatic conditions occurring in citrus-producing areas, the wearing of a face piece respirator is extremely uncomfortable and has caused breathing difficulties and chest pains for the operator. Aggravation of existing health problems or heat prostration also could occur. This may prompt an applicator to disregard the requirement or use the respirator intermittently, causing contamination of the respirator which could actually increase exposure. Data presented in Position Document 3 indicates that dermal exposure is significantly more important than inhalation as a route for applicator exposure (p. 30). Thus, protective clothing is a far more important factor in reducing applicator exposure than is the face piece respirator.

Recommendation: The Department recommends that the USDA-State-EPA chlorobenzilate assessment team meet with other employees of EPA and the registrants to assist in developing research protocols for obtaining the necessary dermal and inhalation data to fully assess applicator and field worker exposure to chlorobenzilate. This should include evaluation of alternative methods of reducing exposure. The Department recommends that chlorobenzilate be classified as a restricted-use pesticide to be applied by or under the supervision of certified applicators, without further specification on the label of clothing type or respirator requirements. We suggest that label wording be developed to encourage the use of a respirator but that it not be made a requirement for permitted use. In addition, we suggest the wording found on page 5-2 of *A Guide for Commercial Applicators*, USDA/EPA be used to specify protective clothing.

4. *Dietary Exposure:* The dietary exposures presented in Position Document 3 are theoretical exposures and do not reflect actual dietary exposures to chlorobenzilate. FDA residue monotoring programs reflect a very small percentage of total samples that contain chlorobenzilate. Of the 6-8,000 samples analyzed annually, approximately 0.12% contained chlorobenzilate residues most of which were reported at trace residue levels of less than 0.1 ppm. EPA assumed that all citrus and nut crops treated with chlorobenzilate contain the analytical detection sensitivity level of 0.1 ppm even though there were no detectable residues in most edible portions of these foods (p. 25). For apples and pears a residue of 5 ppm was assumed (the established tolerance) solely because a portion of these fruits are eaten as fresh, unpeeled produce. No reference is made as to whether residue tests were conducted for these commodities. In determining chlorobenzilate ingestion through milk for the Florida population it was assumed 100 percent of the milk came from cows fed citrus-pulp. No data were presented on the quantity of citrus pulp produced annually or the amount contained in the animal rations. It seems highly unlikely that all dairy cows in Florida would be fed citrus pulp on a continuing basis. Even if this is the case, it is highly questionable that residue levels would be as high as those assumed in the report.

To the extent EPA assumed higher residues than actually exist, the risks based on dietary exposure to chlorobenzilate are too high. Currently, a sensitivity level of 0.01 ppm is obtainable and is being used by FDA and CIBA-GEIGY as indicated in the assessment team's September 1977 letter to EPA. It is our view that these theoretical exposure estimates overstate the possible risk from the continued use of chlorobenzilate beyond a reasonable margin of safety.

Recommendation: The Department recommends that EPA recalculate the estimates based on obtainable analytical sensitivity. In addition, these theoretical calculations should be replaced with actual exposure data as it becomes available. The frequency of positive chlorobenzilate residue traces should also be taken into account in calculating theoretical exposure levels.

We are confident EPA will give favorable consideration to these suggestions and recommendations in developing the final chlorobenzilate registration determinations. The opportunity to have cooperated on this important agricultural matter is very much appreciated by us as well as the whole agricultural community. Please let us know if you need any additional information.

Sincerely,

BOB BERGLAND,
Secretary.

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF TOXIC SUBSTANCES
WASHINGTON, D.C., *August 17, 1978.*

To: Deputy Assistant Admnistrator for Pesticide Programs (TS-766).

From: Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel (TS-766).

Subject: Review of Section 6(b) Action on Chlorobenzilate.

The FIFRA Scientific Advisory Panel has completed review of the Notice of Determination concluding the RPAR on chlorobenzilate and associated regulatory action under consideration by the Agency pursuant to Section 6(b) of FIFRA. Attached is a report of findings by the Panel.

The Panel waives all legal time constraints and agrees that EPA should implement appropriate regulatory action on chlorobenzilate as soon as possible.

Enclosure: Report.

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA) SCIENTIFIC ADVISORY PANEL

REVIEW OF NOTICE OF DETERMINATION CONCLUDING THE RPAR ON CHLOROBENZILATE

The FIFRA Scientific Advisory Panel completed review of documents outlining

plans by the Environmental Protection Agency to conclude the Rebuttable Presumption Against Registration (RPAR) on chlorobenzilate and for initiation of a combination of regulatory actions under the provisions of Section 6(b) of FIFRA, as amended. The review was completed in an open meeting held in Arlington, Virginia, on August 10, 1978.

Maximum public participation has been encouraged at all meetings of the Panel. In respect to formal review of the Agency position on chlorobenzilate, a FEDERAL REGISTER Notice announcing the meeting was published on July 25, 1978. Discussions relative to potential regulatory action by the Agency on chlorobenzilate were also held in meetings of the Panel in Miami, Florida, during May 25-26, 1978, (FEDERAL REGISTER Notice dated May 5, 1978), and Arlington, Virginia, on June 14, 1978, (FEDERAL REGISTER Notice dated May 26, 1978). In addition to public notices, telephonic calls and special mailings were sent to the general public who had previously expressed an interest in activities of the Panel. Written statements relative to regulatory action on chlorobenzilate were received over a period of several months from the following sources: CIBA-GEIGY Corporation (May 26 and June 22, 1978), United States Department of Agriculture (USDA), Florida Citrus Mutual (two submissions on July 3, 1978), Rohm and Haas Company, and the University of Arizona. Dr. C. Cueto of the National Cancer Institute (NCI) presented an overview of the results of a recently released NCI report on bioassay of chlorobenzilate for possible carcinogenicity. In addition, oral comments were received from EPA staff, USDA staff, Dr. Jim Griffiths of the Florida Citrus Mutual, Dr. Joseph L. Knapp of the University of Florida, members of the pesticide indutsry, and the general public.

In consideration of all matters brought out during Panel meetings, matters detailed in written statements, and careful study of all documents submitted by the Agency, the Panel submits the following report on chlorobenzilate:

The FIFRA Scientific Advisory Panel would like to compliment Dr. Wells, Mr. Boyd, and others of the Special Pesticide Review Division and technical support team (Working Group) on the quality of the position document on chlorobenzilate. In addition, we believe the regulatory option chosen by the Agency generally reflects a proper balance between economic considerations, implied health risks from exposure to chlorobenzilate and the availability of alternative pesticides.

The Scientific Advisory Panel is of the opinion the data supporting the consideration of chlorobenzilate as a potential carcinogenic chemical in man is weak. We feel the lack of a positive response in rats, and the weaknesses inherent in the Innes study leaves the NCI study as the only well documented evidence of an oncogenic potential for chlorobenzilate in man.

In spite of the weakness in the data suggesting an oncogenic potential in man, the Scientific Advisory Panel believes it is prudent to reduce the human exposure to chlorobenzilate to the extent feasible after due consideration of the economic aspects of this action and the availability of alternative pesticides.

The Scientific Advisory Panel believes too little attention was paid to the potential adverse effects of chlorobenzilate on human reproduction. The Scientific Advisory Panel considers the potential adverse effect on reproduction in humans to be as important an issue as the potential oncogenicity of chlorobenzilate. The Scientific Advisory Panel recognizes that the Agency and other interested parties only became aware of reproductive effects as a potential trigger late in the development of the decision document. Therefore, there appears to be some justification for the incomplete nature of the decision document regarding potential reproductive effects.

In regard to the specific recommendations of EPA relative to chlorobenzilate, the Scientific Advisory Panel proposed the following modifications:

1. We do not feel the Working Group has provided sufficient justification for the exclusion of States other than Florida, Texas, and California from the continued use of chlorobenzilate on citrus crops. Therefore, we feel all States should be allowed the continued use of chlorobenzilate on citrus crops.

2. The Scientific Advisory Panel believes the registration for use of chlorobenzilate on non-citrus crops and ornamentals should be continued on the same basis as for citrus crops. In this regard, the proposed studies concerning residues in food crops, applicator exposure, aerial application exposure, etc., required in Option F for citrus crops should also be required for non-citrus crops. The Scientific Advisory Panel believes the continued use of chlorobenzilate on non-citrus crops is justified on the basis of the fact that alternative pesticides may pose a greater potential health threat than chlorobenzilate.

3. Due to the lack of information on the potential adverse effects of chlorobenzilate on human reproduction we recommend the following studies be carried out:

a. The examination of sperm counts in a selected population of chlorobenzilate applicators.

b. A three-generation reproductive study in rats at sufficient dose levels to allow the determination of a no-adverse-effect level of chlorobenzilate on reproduction in that species. This study should be carried out using the protocol currently described in the proposed EPA guidelines for risk assessment of FIFRA chemicals.

Dated: August 17, 1978.

H. WADE FOWLER, Jr.,
Executive Secretary,
FIFRA Scientific Advisory Panel.

[FR Doc. 79-4646 Filed 2-12-79; 8:45]

Federal Register

TUESDAY, FEBRUARY 13, 1979

PART V

DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING

Proposed Prohibition; Public Hearing

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 516]

[Docket No. ERA-R-79-6]

SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING

Proposed Prohibition; Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposes this rule to carry out provisions of the Powerplant and Industrial Fuel Use Act of 1978 (the Act) which prohibit the installation of new or replacement natural gas outdoor lighting fixtures by local distribution companies and direct industrial customers. The Act also prohibits local distribution companies from providing natural gas to residential, commercial, and industrial customers for use in outdoor lighting, as well as prohibiting the use of natural gas by direct industrial customers for outdoor lighting. ERA also has the prerogative of delegating, to the States, its authority for administering prohibitions with regard to gas lighting under section 402 of the Act, and proposes to do so in this rule.

DATES: Comments by April 16, 1979; hearing to be held at 9:30 a.m. on March 22, 1979.

ADDRESS: Any person wishing to comment on this proposed rule should send 10 copies of written comments to: Department of Energy, Office of Public Hearing Management, Room 2313, 2000 M Street, N.W., Docket ERA-R-79-6, Washington, D.C. 20461, Telephone 202-254-5201. This address should also be used to make requests to speak at the public hearing and for submitting copies of hearing testimony. Hearing location: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Barry W. Hirsch, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W. (Vanguard 538), Washington, D.C. 20461, 202-254-9700.

Robert C. Gillette (Hearing Procedures), Office of Public Hearing Management, 2000 M Street, NW., Room 2222, Washington, D.C. 20461, 202-254-5201.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 9, 1978, the President signed into law the Powerplant and Industrial Fuel Use Act of 1978 as one part of the National Energy Act. Section 402 of the Act, "Prohibition on Use of Natural Gas for Decorative Outdoor Lighting," directs DOE (ERA) to prohibit by rule, by May 8, 1979, any local distribution company from supplying natural gas for use in outdoor lighting and any direct industrial customers from using natural gas for outdoor lighting. The purpose of this Notice is to propose such a rule. In addition, the Act prohibits, effective November 9, 1978, the installation of new outdoor lighting fixtures using natural gas.

Under the Act, ERA has the prerogative of fully delegating responsibility and authority for implementation of Section 402 to appropriate State regulatory authorities. This proposed rule exercises this prerogative and prescribes those conditions and requirements imposed by ERA pursuant to the delegation.

Environmental Impact

After reviewing the rule pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), ERA has determined that the proposed action does not constitute a federal action significantly affecting the quality of the human environment. Therefore, no environmental assessment or environmental impact statement was prepared and a negative determination to that effect is hereby issued.

Regulatory Impact

ERA has determined that the publication of this rule does constitute a significant regulatory action. Preparation of a regulatory analysis is not required, however, on the basis of criteria established by Executive Order 12044. This conclusion is based on the fact that the rule will not have a major impact. That is, it is not likely to impose a gross economic annual cost of $100 million or more; nor is the rule likely to impose a major increase in costs or prices for individual industries; levels of government, geographic regions, or demographic groups.

It is estimated that 1.5 million natural gas outdoor lighting fixtures will be affected by this rule. Since the average annual gas usage per fixture is about 18,000 cubic feet, this will result in gas savings of 27.5 trillion BTU's per year. Assuming substitution of electric lighting for 40 percent of those natural gas fixtures eliminated, and further assuming that the substitute electric lighting will use a 60 watt bulb for an average of five hours a days, the net energy savings would be about 26.8 trillion BTU's per year or 13,110 barrels of oil per day equivalent (BPDE). This represents approximately 0.14 percent of national annual natural gas consumption.

Specific Comments Requested

ERA is issuing this proposed rule with the desire of focusing public attention and discussion on ERA's proposal for implementing Section 402 of the Act. The public is encouraged to comment not only on those issues enumerated below, but on all aspects of this rule. ERA will consider all comments before reaching any final decisions.

1. *Delegation of Authority.* The Act gives ERA the prerogative of delegating responsibility and authority for administering the program to the appropriate State regulatory authorities. We propose to exercise this option, noting that the congressional conferees, in their Explanatory Statement for the Act, explicitly encourage DOE to do so. Enforcement of the statutory provisions of the Act constitutes a regulatory activity most appropriately conducted at the State level. Programs to prohibit the use of natural gas for outdoor lighting already exist in 21 States. Delegating authority to the appropriate State regulatory authorities, with minimum Federal guidance, will allow sensitivity to local conditions.

ERA believes that the appropriate State regulatory authority for administering the program will be, in most cases, the agency which has authority to fix, modify or approve rates for the sale of natural gas. Though this will generally be the public utility or public service commission, in some cases a municipality will have the authority to determine its own rates and will be responsible for program administration in its service area. In other cases, State law may provide that some agency other than a public utility or public service commission has jurisdiction in regard to prohibiting the use of natural gas for outdoor lighting. The definition of "State regulatory authority" found in § 516.11(g) of the rule allows flexibility in these cases.

ERA also requests comments regarding any role that the Federal Energy Regulatory Commission should play in regard to the prohibition on the supply of natural gas by pipeline companies to industrial customers.

2. *Guidance on Exemptions—General.* ERA has made provisions for States to adopt their own criteria and the guidance set forth in this rule applies until such time as the various States exercise this option. ERA is particularly interested in receiving comments regarding the practicality and fairness of the guidance provided as criteria by the States for granting

exemptions. ERA is also interested in suggestions as to the appropriate role of Federal or State government agencies or natural gas utility companies in providing assistance in converting to alternate lighting facilities.

3. *Guidance on Exemptions—Lighting of Historical Significance.* ERA believes that the historical significance of a property should be founded upon a showing that the specifically identified historic property:

- Is listed on the National Register of Historical Places maintained by the Heritage Conservation and Recreation Service, Department of Interior, or is officially determined eligible for listing by the Secretary of Interior (pursuant to the National Historic Preservation Act, 16 U.S.C. 470); or
- Is in a district whose State statutes are certified as providing adequate protection of historic places by the Secretary of the Department of Interior (pursuant to the Tax Reform Act of 1976, 26 U.S.C. 191, 280B).

An element was added regarding certification by the petitioner that the specifically identified natural gas outdoor lighting fixture meaningfully contributes to the quality of significance of the historic property. ERA recognizes the subjective nature of the requirement. ERA feels, however, that adding more specific criteria or requiring documentation would not serve the purposes of the Act, since the regulatory burden this would entail would be significant, with little benefit in terms of increased energy savings.

ERA particularly invites comments from the Heritage Conservation and Recreation Service, Department of Interior, and the State Historic Preservation Officers.

4. *Guidance on Exemptions—Safety.* ERA believes that it is not sufficient for a petitioner to show only that a natural gas outdoor lighting fixture is required to protect the safety of persons and property before a safety exemption is granted. For this reason, ERA's guidance includes a provision that a person demonstrate that conversion to another lighting system would entail substantial and unjustified expense.

Public Hearing and Comment Procedures

1. *Written Comments.* The public is invited to submit data, views or arguments with respect to the proposals set forth in this rule.

2. *Public Hearings*—a. *Procedures for request to make oral presentation.* If you have any interest in this notice, or represent a person, group, or class of persons that has an interest, you may request an opportunity to speak at the public hearing. Requests to speak must be received in writing by 4:30 p.m. on March 8, 1979.

In your request, briefly describe your interest and, if applicable, state why you are a proper representative of a group or class of persons having such interest. In addition, give a concise summary of the proposed oral presentation and a phone number where ERA may contact you through March 21, 1979. If ERA selects you to be heard, you will be told before March 14, 1979. For distribution at the hearings, you should submit 100 copies of your hearing testimony for receipt by 4:30 p.m., on March 21, 1979.

b. *Conduct of the Hearing.* ERA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. ERA may limit the length of each presentation, based on the number of persons requesting to be heard. ERA will designate an official to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only to those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement may be given the opportunity, if he so desires, to make a rebuttal statement. Rebuttal statements will also be subject to time limitations.

If you wish to ask a question at the hearing, you must submit it in writing to the presiding officer. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

ERA will have a transcript made of the hearing, and ERA will retain the entire record of the hearing, including the transcript, and make it available for inspection at the Freedom of Information Office, Room GA 152, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., on February 7, 1979.

Hazel R. Rollins,
Acting Administrator, Economic Regulatory Administration.

Part 516 is added to Title 10, Chapter II, to read as follows:

PART 516—PROHIBITION ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING

Subpart A—General Purpose and Scope: Definitions

Sec.
516.10 General purpose and scope.
516.11 Definitions.

Subpart B—Prohibitions

Sec.
516.20 General prohibition on installation of natural gas outdoor lighting fixtures.
516.21 General prohibition on sale of natural gas for use in outdoor lighting.
516.22 Prohibition on use of natural gas by direct industrial customers for outdoor lighting.

Subpart C—Delegation of Authority

516.30 Delegation.
516.31 Reports.
516.32 Recission.

Subpart D—Guidance on Exemptions

516.41 Applicability.
516.42 Lighting of historical significance.
516.43 Memorial lighting.
516.44 Safety of persons and property.
516.45 Time to install substitute lighting.
516.46 Substantial expense.
516.47 Public interest.

Subpart A—General Purpose and Scope; Definitions

§ 516.10 General purpose and scope.

(a) The purpose of this rule is to implement section 402 of Pub. L. 95-620, the Powerplant and Industrial Fuel Use Act of 1978 (the Act). The objective of section 402 of the Act is to eliminate the use of natural gas for nonessential outdoor lighting and to conserve such gas for the benefit of present and future generations.

(b) The rule consists of four subparts. Subpart A consists of this section, entitled "General Purpose and Scope," and § 516.11, "Definitions."

(c) Subpart B contains the prohibitions on the installation of natural gas outdoor lighting fixtures and the sale and direct industrial use of natural gas for outdoor lighting. Section 516.20 prohibits the installation of natural gas outdoor lighting fixtures. Sections 516.21 and 516.22 prohibit local distribution companies from providing natural gas to residential, commercial, and industrial customers for use in outdoor lighting as well as prohibiting the use of natural gas by direct industrial customers for outdoor lighting.

(d) Subpart C delegates to the appropriate State regulatory authorities the responsibility and authority of the Secretary of DOE with regard to natural gas outdoor lighting. The specific authorities delegated are set forth in § 516.30. Section 516.31 sets forth the reports which the appropriate State regulatory authorities are required to submit to ERA. Section 516.32 provides for rescission, by ERA, of the delegation of authority as it applies to any particular State.

(e) Subpart D sets forth guidance to be followed by the appropriate State regulatory authorities in granting or denying requests for exemption in the absence of the exercise of authority by the State in promulgating its own criteria. Criteria for granting or denying exemptions are provided for each of

the categories of exemption established by the Act: Lighting of historical significance (§ 516.42); memorial light (§ 516.43); safety of persons and property (§ 516.44); time to install substitute lighting (§ 516.45); substantial expense (§ 516.46); and public interest (§ 516.47).

§ 516.11 Definitions.

Unless otherwise expressly provided, for the purposes of this rule—

(a) The term "direct industrial customer" means an industrial user of natural gas who obtains the natural gas under a contract with a natural gas pipeline company, or any agent thereof.

(b) The term "local distribution company" means any person engaged in the business of interstate or intrastate transportation and local distribution of natural gas for ultimate consumption.

(c) The term "natural gas" means any fuel consisting in whole or in part of natural gas, liquid petroleum gas, or synthetic gas derived from petroleum or natural gas liquids.

(d) The term "natural gas outdoor lighting fixture" means a complete stationary natural gas outdoor lighting unit, or any parts thereof, which may include a mantle or mantles together with the parts designed to distribute the light, to position and protect the mantles and fuel supply lines, and to connect the mantle or mantles to the fuel supply.

(e) The term "pipeline company" means any person engaged in the business of interstate or intrastate transportation of natural gas by pipeline other than as a local distribution company.

(f) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with such unit and including multiple family dwelling units which may be classified by the local distribution company as "commercial" customers.

(g) The term "State regulatory authority" means any agency of the 50 States, the District of Columbia, Puerto Rico, or any territory or possession of the United States, which has authority to fix, modify or approve rates for the sale of natural gas by local distribution companies within that State, unless otherwise designated by ERA. In the case of a local distribution company which is not regulated by a State regulatory authority, references in this part to "State regulatory authority" or "State" shall be treated as references to such local distribution company.

(h) The term "substitute lighting" means outdoor lighting which does not directly burn natural gas.

Subpart B—Prohibitions

§ 516.20 General prohibition on installation of natural gas outdoor lighting fixtures.

(a) *Prohibition.* No local distribution company or direct industrial customer shall install any natural gas outdoor lighting fixture.

(b) *Effective date.* The prohibition stated in paragraph (a) of this section shall be effective beginning on November 9, 1978.

§ 516.21 General prohibition on sale of natural gas for use in outdoor lighting.

(a) *Prohibition.* No local distribution company shall supply natural gas for use in outdoor lighting.

(b) *Effective dates.* (1) In the case of any residential, commercial, or industrial customer, the prohibition stated in paragraph (a) of this section shall be effective on May 8, 1979, unless a later effective date is applicable under paragraphs (b) (2), (3), or (4) of this section.

(2) In the case of any industrial or commercial structure to which natural gas was being supplied by the local distribution company for outdoor lighting use on November 9, 1978, the prohibition stated in paragraph (a) of this section shall be effective on November 5, 1979.

(3) In the case of any municipal outdoor lighing fixture to which natural gas was being supplied by the local distribution company for outdoor lighting use on November 9, 1978, the prohibition stated in paragraph (a) of this section shall be effective January 1, 1982.

(4) In the case of any outdoor lighting fixture used in connection with a residence to which natural gas was being supplied by the local distribution company for outdoor lighting use on November 9, 1978, the prohibition stated in paragraph (a) of this section shall be effective January 1, 1982.

§ 516.22 Prohibition on use of natural gas by direct industrial customers for outdoor lighting.

(a) *Prohibition.* No direct industrial customer shall use natural gas for outdoor lighting.

(b) *Effective dates.* (1) In the case of a direct industrial customer who was using natural gas for outdoor lighting on November 9, 1978, the prohibition stated in paragraph (a) of this section shall be effective on November 5, 1979.

(2) In the case of a direct industrial customer using a natural gas outdoor lighting fixture(s) that:

(i) Was installed prior to the ban on the installation of such fixture(s) set out in § 516.20 of this rule; and

(ii) Was not using natural gas for such fixture(s) on the date this rule is issued as a final rule—

The prohibition stated in paragraph (a) of this section shall be effective on May 8, 1979.

Subpart C—Delegation of Authority

§ 516.30 Scope.

Pursuant to section 402(e) of the Act, ERA delegates to the appropriate State regulatory authorities, effective on the date this rule is issued as a final rule, the full responsibility and authority of the Secretary of DOE with regard to natural gas outdoor lighting. The authorities and responsibilities delegated by this rule to the appropriate State regulatory authorities are those enumerated in paragraphs (a) through (g) of this section.

(a) *Authority to promulgate regulations.* The authority to promulgate regulations pursuant to Subpart B of this rule, prohibiting the installation of natural gas outdoor lighting fixtures and the sale and direct industrial use of natural gas for outdoor lighting, is delegated to the appropriate State regulatory authorities.

(b) *Authority to issue orders.* The authority to issue orders exempting certain natural gas outdoor lighting fixtures from the prohibitions set forth in Subpart B of this rule is delegated to the appropriate State regulatory authorities. Such exemption orders may be issued on the basis of:

(1) Lighting of historical significance;

(2) Memorial lighting;

(3) Lighting which is necessary to protect the safety of persons and property;

(4) the necessity to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) existed on November 9, 1978;

(5) Substantial expense which would not be cost justified; or

(6) The public interest and consistency with the purposes of the Act.

(c) *Authority to establish exemption criteria.* The authority to establish criteria to be used in making any determinations to issue any orders relating to exemptions from the prohibitions set forth in Subpart B of this rule is delegated to the appropriate State regulatory authorities.

(d) *Authority to establish exemption procedures.* The authority to establish procedures for the acceptance, processing, consideration, and grant or denial of applications and requests for exemptions from the prohibitions set forth in Subpart B of this rule is delegated to the appropriate State regulatory authorities.

(e) *Authority to establish enforcement mechanisms.* The authority to establish enforcement policies, criteria and procedures with respect to the prohibitions set forth in Subpart B of

this rule is delegated to the appropriate State regulatory authorities.

(f) *Authority to enforce prohibitions and assess civil penalties.* The authority to enforce the prohibitions set forth in Subpart B of this rule, including the authority to assess civil penalties for noncompliance with such prohibitions pursuant to Section 723(c) of the Act, is delegated to the appropriate State regulatory authorities.

(g) *Authority to investigate.* The authority to initiate investigations and compel the submission of data or relevant documents is delegated to the appropriate State regulatory authorities.

§ 516.31 Reports.

Pursuant to this delegation, the appropriate State regulatory authority shall submit to ERA the documents specified in paragraphs (a) and (b) of this section. Such documents shall be submitted to: Economic Regulatory Administration, Office of Utility Systems, Department of Energy, 2000 M Street, NW. (Vanguard 538-A), Washington, D.C. 20461.

(a) *Annual Report.* The appropriate State regulatory authority shall submit annually to ERA, until January 1, 1984, either in separate format or in conjunction with reports required by DOE pursuant to requirements established under Section 309 of the Public Utility Regulatory Policies Act of 1978, 92 Stat. 3117 (Pub. L. 95-617), a report setting forth:

(1) Current estimated annual natural gas consumption within the State attributable to outdoor lighting;

(2) A current set of rules and regulations establishing any prohibitions against the use of outdoor natural gas lighting, for enforcing the prohibitions, and for granting or denying exemptions to the prohibitions; and

(3) A summary of orders granted and denied during the year, by category of exemption, and including the rationale for such grant or denial.

(b) *Enforcement plan.* The appropriate State regulatory authority shall submit to ERA, within one year of the date this rule becomes a final rule, an enforcement plan containing the following:

(1) Copies of all State statutes, rules or regulations relating to the regulation or prohibition of natural gas lighting within the State;

(2) A description of the State's current or projected efforts to enforce the prohibitions set forth in Subpart B of this rule; and

(3) A current copy of all State procedures to grant or deny an exemption from the prohibitions set forth in Subpart B of this rule.

§ 516.32 Rescission.

This delegation as it applies to any particular State my be rescinded by ERA at any time by notifying the appropriate State Regulatory authority of such rescission.

Subpart D—Guidance on Exemptions

§ 516.41 Applicability.

The appropriate State regulatory authority shall grant or deny a request for exemption on the basis of the guidance specified in this subpart until such time as the appropriate State regulatory authority chooses to exercise the authority delegated by § 516.30(c) of this rule.

§ 516.42 Lighting of historical significance.

(a) *Scope.* A Federal, State or local government agency, or an appropriate historical association, may petition the appropriate State regulatory authority for an exemption from the prohibitions set forth in §§ 516.20 and 516.21 of this rule on the basis of historical significance. An exemption on the basis of historical significance for a commercial establishment may be requested by any interested person. In the case of a petition for an exemption from the prohibition set forth in § 516.20 of this rule (General prohibition on installation of natural gas outdoor lighting fixtures), an exemption shall be granted only for replacement of a. natural gas outdoor lighting fixture(s) that was installed prior to November 9, 1978.

(b) *Criteria.* The criteria for an exemption on the basis of historical significance shall be satisfied upon certification, by the petitioner, that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and upon a finding that the specifically identified historic property:

(1) Is listed on the National Register of Historic Places maintained by the Heritage Conservation and Recreation Service, Department of Interior, or is officially determined eligible for listing by the Secretary of Interior, pursuant to the National Historic Preservation Act (16 U.S.C. 470 as amended), applicable regulations (36 CFR Parts 60 and 63), and Executive Order 11593; or

(2) Is in a district whose State statutes are certified as providing adequate protection of historic places by the Secretary of the Department of Interior, pursuant to the Tax Reform Act of 1976 (26 U.S.C. 191, 280B) and applicable regulations.

(c) *Stays.* An exemption request shall result in a stay from the prohibitions set forth in Subpart B of this rule if:

(1) The petitioner has certified that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and

(2) An application is pending, before the Department of Interior, for inclusion in one of the categories specified in subparagraphs (1) or (2) of paragraph (b) of this section.

§ 516.43 Memorial lighting.

(a) *Scope.* A Federal, State or local government agency, or an appropriate historical association, may petition the appropriate State regulatory authority for an exemption from the prohibitions set forth in §§ 516.20 and 516.21 of this rule on the basis of memorial lighting. In the case of a petition for an exemption from the prohibition set forth in § 516.20 of this rule (General prohibition on installation of natural gas for outdoor lighting fixtures), an exemption shall be granted only for replacement of a natural gas outdoor lighting fixture(s) that was installed prior to November 9, 1978.

(b) *Criteria.* The criteria for an exemption on the basis of memorial lighting shall be satisfied upon a finding that the specifically identified outdoor lighting fixture(s) directly contributes to preserving the memory of a deceased person or persons.

§ 516.44 Safety of persons and property.

(a) *Scope.* A local distribution company, a direct industrial customer, or an interested person acting on behalf of either, may petition the appropriate State regulatory authority for an exemption from the prohibitions set forth in §§ 516.21 and 516.22 of this rule on the basis of the necessity to protect the safety of persons and property if such natural gas was being supplied on November 9, 1978.

(b) *Criteria.* The criteria for an exemption on the basis of the necessity to protect the safety of persons and property shall be satisfied upon a finding that:

(1) (i) Compliance with the prohibition would significantly increase the chances of bodily injury or damage to property;

(ii) Compliance with the prohibition would significantly increase the chances of the occurrence of crime; or

(iii) The lighting in question is necessary to assure conformance with American National Standards Institute (ANSI) Standard Number D 12.1 "The American National Standard Practice for Roadway Lighting;" and

(2) Converting to a substitute lighting facility:

(i) Would impose a substantial hardship on a person other than a local distribution company, a pipeline company, or a company that manufactures or supplies natural gas outdoor light-

ing fixtures, in terms of personal income or savings; or

(ii) Would not be justified by the savings likely to be accrued over the useful life of the substitute lighting facility.

§ 516.45 Time to install substitute lighting.

(a) *Scope.* A local distribution company, a direct industrial customer, or an interested person acting on behalf or either, may petition the appropriate State regulatory authority for a temporary exemption from the prohibitions set forth in §§ 516.21 and 516.22 of this rule. Such an exemption shall be on the basis of the time needed to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists, if such natural gas was being supplied on November 9, 1978.

(b) *Criteria.* The criteria for an exemption on the basis of time to install substitute lighting shall be satisfied upon a finding that:

(1) No adequate outdoor lighting (other than that using natural gas) is available at the time the applicable prohibition became effective; and

(2) The time required for installation of the substitute lighting will not extend beyond one year from the date the applicable prohibition became effective, unless facts and circumstances warrant a longer period.

§ 516.46 Substantial expense.

(a) *Scope.* A local distribution company, a direct industrial customer, or an interested person acting on behalf of either, may petition the appropriate State regulatory authority for an exemption from the prohibitions set forth in §§ 516.21 and 516.22 of this rule on the basis of substantial expense which would not be cost justified, if such natural gas was being supplied on November 9, 1978.

(b) *Criteria.* The criteria for an exemption on the basis of substantial expense which would not be cost justified shall be satisfied upon a finding that compliance with the prohibitions set forth in §§ 516.21 and 516.22 of this rule would substantially and negatively affect the profit margin, return on investment, or rates of a local distribution company or direct industrial customer.

§ 516.47 Public interest.

(a) *Scope.* A local distribution company, a direct industrial customer, or an interested person acting on behalf of either, may petition the appropriate State regulatory authority for an exemption from the prohibitions set forth in §§ 516.21 and 516.22 of this rule on the basis of the public interest and consistency with the pruposes of the Act, if such natural gas was being supplied on November 9, 1978.

(b) *Criteria.* The criteria for an exemption on the basis of the public interest and consistency with the purposes of the Act shall be satisfied upon a finding that converting a specific natural gas outdoor lighting fixture(s) to substitute lighting would not reduce the use of natural gas.

[FR Doc. 79-4686 Filed 2-12-79; 8:45 am]

Federal Register

TUESDAY, FEBRUARY 13, 1979

PART VI

CIVIL AERONAUTICS BOARD

■

FILING DOMESTIC PASSENGER FARES; COMPLAINTS REQUESTING SUSPENSION OF TARIFFS—ANSWERS TO SUCH COMPLAINTS

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATION

[Regulation ER-1104; Amendment No. 48; Docket 33113]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Filing Domestic Passenger Fares; Notice Requirement

FEBRUARY 7, 1979.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule sets the notice required for filing domestic passenger fares filed within the zone of reasonableness at 30 days, and for passenger tariffs outside the zone and cargo tariffs at 60 days. It also sets the deadline for complaints seeking suspension of fares and rates at 10 days after tariffs are filed, and for answers to complaints at 6 working days after the complaint is filed. The rules are effective immediately, but by a notice in this issue of the FEDERAL REGISTER, we invite comments on them to aid adoption of a final policy.

DATES: Adopted: February 7, 1979. Effective: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Mark S. Kahan or John Freeman, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428: (202) 673-5205/673-5793.

STATUTORY TARIFF NOTICE

The Airline Deregulation Act of 1978 (Pub. L. 95-504) changes the notice period carriers must give when they change their tariffs. Previously all tariffs were filed on at least 45 days' notice, except air freight tariffs of direct carriers which were filed on 60 days' notice. The Deregulation Act creates a system of 60- and 30-day filings. Under section 403(c) (49 U.S.C.A. 1373(c)), changes in tariffs are to be made on 60 days' notice if they institute a fare which is outside the range of fares specified in subparagraphs (A) and (B) of section 1002(d)(4), (49 U.S.C.A. 1482(d)(4)) or a fare to which the range does not apply. Other tariffs are to be filed on 30 days' notice.

This rulemaking is designed to conform our rules to the new Act and clarify any ambiguities as to our administration of it. Because the provisions in the new Act were effective upon adoption and there has been some uncertainty in the area, we find for good cause that these rules of agency policy, procedure and practice should become effective immediately. However, we welcome the views of interested persons on this matter, and, by a notice in this issue of the FEDERAL REGISTER, we invite them to file comments in this docket on the rule.

We will require all tariffs instituting a fare inside the zone to be filed at least on 30 days' notice. For now, that will include domestic fare decreases down to 50 percent of the standard industry fare level (SIFL) as defined in the statute. Even though we have not yet computed a precise SIFL inflation factor carriers may file fare decreases that clearly fall within the zone on 30 days' notice; if the carrier is uncertain, it can file on 60 days'. As of July 1, 1979, carriers with less than 70 percent of the traffic in a market may file fare increases up to 105 percent of the SIFL on 30 days' notice. Until then, *all* fare increases are considered outside the zone. By that date we should have taken final action on a method for determining eligibility for upward flexibility and for calculating the SIFL, so that there will be a greater certainty about whether a specific filing is within the zone. All tariff filings outside the zone or to which the zone does not apply (including domestic passenger filings outside the zone and all international passenger and cargo filings) must be on 60 days' notice.[1] In determining whether a carrier has 70 percent of the traffic in a market, we will, for the present, use the most recent available month of service segment data on file with the Board.

We recognize ambiguities in the statute but conclude that the above scheme best gives effect to Congress' intent throughout the Act. First, section 403(c)(2) establishes 60-day filing for fares outside the zone or fares not covered by the zone. Inasmuch as the zone applies strictly to interstate and overseas air transportation, tariffs governing foreign air transportation are to be filed on at least 60 days' notice, unless a bilateral agreement between the United States and the country at issue governs and requires a different filing period. While section 403(c)(2) is written in terms of "fares", there is no reason to believe that Congress intended to limit that section to passenger tariffs. There are other places in the statute where the term "fare" is used to include rates for freight transportation—*e.g.*, section 1002(d)(8), section 403(c)(1). Accordingly, we conclude that section 403(c)(2) governs both foreign passenger and freight tariffs.[1a]

A second ambiguity concerns the advance notice the Board must give of a tariff suspension. Under section 403(c)(3), that period is 30 days. Ordinarily there is no problem with the 30-day notice requirement because tariffs subject to suspension are outside the zone and are therefore filed on 60 days' notice. However, some tariffs that are subject to suspension may be filed on less than 60 days' notice. For example, fare decreases are filed on 30 days' notice, but if the Board concludes that they may be predatory, it has the authority to suspend under section 1002(g). Similarly, there are bilateral agreements permitting foreign filings (which are subject to suspension) on less than 60 days' notice. For tariffs filed on less than 60 days' notice, it will usually be impractical to expect the Board to give 30 days' notice of suspension. Indeed, some tariffs need only be filed on 30 days' notice.

There are several ways to preserve the Board's suspension authority consistent with the Act's advance filing requirements. First, we can invoke section 1002(g) to suspend up to 15 days before the tariffs' effective date. Second, we can suspend the tariffs' effectiveness in order to provide additional time for pleadings and analysis for the suspension issue. Third, where a bilateral agreement is invoked to permit filing on less than statutory notice, the same agreement may permit suspension on less than 30 days' notice. Finally, section 1002(j)(2) permits the Board to suspend an existing tariff in foreign air transportation. We are of course reluctant to use that provision because of the disruption caused by suspension of an existing fare, but we may do so if there is no other means to prevent the charging of a potential unlawful fare, and we will make every effort to give the carrier notice of our intent to do so.

COMPLAINTS AND ANSWERS

By ER-1038 and PR-169, we amended the existing rules for complaints and answers to conform to changes in Pub. L. 95-163. For domestic passenger fares, tariffs were filed on 45 days' notice, complaints were due 33 days before the tariffs' effective date and answers to complaints continued to be required 6 working days after the complaints. For international tariffs (which were generally filed on 45 days'

[1] For purposes of tariff filing, we are using the statutory zone, as opposed to the wider zone the Board has created for purposes of its no-suspend policy.

[1a] The Board is no longer concerned with advance filing for most domestic freight tariffs or suspension of those tariffs. ER-1080/1081/1082, adopted November 8, 1978.

notice except for direct cargo carriers which filed on 60 days' notice) complaints were filed 25 days before the tariff's effective date and answers were due 5 calendar days later.

In PR-177 (adopted, August 25, 1978), we further amended our procedural rules to provide for responses to answers to complaints against tariffs which institute fares within the no-suspend zone created by PS-80 and for which we require no accompanying justification. Such complaints were due 39 days before the effective date of the tariff, answers were due 7 days after the complaints and replies to the answer were due 7 days after answers.

At the same time that the above changes were being made to reflect statutory requirements and the Board's no-suspend zone in PS-80, the Board also proposed to revamp the complaints and answer procedure completely so that the complaint period would be measured from the date of the tariff filing, rather than its effective date. EDR-360, PDR-55, 43 FR 34788, August 7, 1978. For tariffs filed well in advance of the date when suspension would be required, this would give the Board more time to consider complaints and answers, and it would make for a more uniform scheme of filing requirements.

Several carriers have complained that EDR-360/PDR-55 does not allow sufficient time to prepare complaints and answers.[2] They claim inadequate intercity mail service, the need to coordinate analytical and legal work, the time lag for mail to Hawaii and to Europe and the possibility that intervening holidays will further erode time for preparation. The carriers do not generally challenge the idea of measuring the complaint period from the tariff-filing date.

As noted above, we will generally give notice of suspension at least 30 days before a tariff's effective date. If a tariff is filed on 60 days' notice, that leaves 30 days for pleadings and Board analysis of those pleadings. If we permit 10 days for complaints, and 6 working days for answers, the remaining Board time for suspension would be as few as 6 working days.[3] We consider this to be a minimum period for Board Action. Of course, for domestic passenger tariffs which are within the zone and are filed on 30 days' notice to be suspended no later than 15 days before the effective date, the 10 day complaint period will probably not give the Board sufficient time. We urge complainants to file as early as possible, and to notify the Board's staff of their intent to file in advance.[4]

This scheme keeps in effect the current six working (as opposed to calendar) day period for answers and thus moots most of the objections noted by the carriers to EDR-360. While some carriers suggest that the 10 day complaint period is also skimpy, we are convinced that it is adequate, but will be open to change it if real problems develop.

It should be noted that the above rules apply to all filings, thus doing away with existing special rules for foreign tariffs. We have had a different scheme for foreign tariffs because of the requirement in section 801 (49 U.S.C.A. 1461) that the President have 10 days to disapprove Board action under section 1002(j). With the passage of the ADA, the advance suspension requirement generally applies to foreign filings. Since that requirement is one of notice, that period and the Presidential period can run concurrently, once the Board's decision has been released to the public, so there is no longer a need for any distinction between foreign and domestic filings for purposes of our complaint and answer procedures.

We are amending Part 302 of our Procedural Rules (14 CFR Part 302) in PR-194 (FR Doc. 79-4756, published in this separate part), to reflect the above findings.

Accordingly, the Civil Aeronautics Board Amends Part 221 of its Economic Regulations (14 CFR Part 221) as follows:

1. Secton 221.22 is amended by revising subparagraph (b)(5) to read as follows:

§ 221.22 Specifications applicable only to loose-leaf tariff publications.

* * * * *

(b) *Information required on all interior pages.* Each original page and revised page following the title page of a loose-leaf tariff shall contain the following information in the location specified:

* * * * *

(5) In the lower left corner, the issued date of the page.

2. Section 221.31 is amended by revising subparagraph (a)(10) to read as follows:

§ 221.31 Title page.

(a) *Contents.* Except as otherwise required in this Part, or by other regulatory agencies, the title page of every tariff shall contain the following information to be shown in the order named in subparagraphs (1) to (12) of this paragraph and shall contain no other matter:

* * * * *

(10) *Issued date.* The date on which the tariff is issued shall be shown in the lower left-hand portion of the title page in the following manner:

Issued: ——————————, 19—

(Show month, date, and year in full, using no abbreviations.)

Tariffs must be received by the Board on or before the designated issued date. (See § 221.160(d) and § 221.171 of this Part.)

3. Section 221.112 is amended by revising subparagraph (b)(7) to read as follows:

§ 221.112 Amending book tariff by supplement (also applicable to supplements to loose-leaf tariffs when such supplements are specifically authorized in this Part).

* * * * *

(b) *Title page of supplement.* Except as otherwise provided in this part, the title page of each supplement shall contain the following information to be shown in the order named below, and shall contain no other maner:

* * * * *

(7) *Issued date.* The date on which the supplement is issued shall be shown in the lower left-hand portion of the title page. Tariffs must be received by the Board on or before the designated issued date. (See § 221.160(d) and § 221.171 of this part.)

4. Section 221.160 is amended by amending paragraph (a) and by adding paragraph (d) to read as follows:

§ 221.160 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Board, or otherwise provided in a bilateral agreement between the United States and the Government of a foreign country, all tariffs, supplements, and loose-leaf tariff pages and all fares, rates, charges, ratings, routings, rules, amendments and other tariff provisions therein (including initial rates, fares, charges, and tariff provisions) as required by this part shall be filed with the Board at least the following number of days before the date they are to become effective regardless of whether or not any changes are effected thereby:

[2] Aloha Airlines, Inc.; American Airlines, Inc., British Airways; British Caledonian Airways, Ltd., Delta Air Lines, Inc.; DHL Corporation; Hawaiian Airlines, Inc., Hughes Airwest; Trans World Airlines, Inc., and United Air Lines, Inc., filed answers opposing part or all of the proposed rule.

[3] Assume that days 10, 11, 12 and 17, 18, 19 are holidays, so that the complaint is due on day 13 and the answer is due on day 22. If days 24 and 25 are also holidays, then the Board would have only 6 working days to evaluate the pleadings and make its decision.

[4] We of course can no longer adhere to the three-pleading system adopted in PR-177 for tariffs which are filed only 15 days before the Board must act to suspend, and we are ending that system.

(1) For tariffs stating a domestic passenger fare within the range of fares created by section 1002(d)(4) of the Act (49 U.S.C.A. § 1482(d)(4)), at least 30 days;

(2) For all other tariffs, at least 60 days.

* * * * *

(d) *Issued date.* All tariff publications must be received by the Board on or before the designated issued date.

5. Section 221.171 is amended by revising paragraph (c) to read as follows:

§ 221.171 Posting at stations, offices, or locations other than principal or general office.

(c) Tariff publications shall be posted by each carrier party thereto no later than the issued date designated thereon except that in the case of carrier stations, offices or locations situated outside the United States, its territories and possessions, the time shall be not later than five days after the issued date, and except that a tariff publication which the Board has authorized to be filed on shorter notice shall be posted by the carrier on like notice as authorized for filing.

(Sections 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C. 1324, 1373, 1482, as amended.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4759 Filed 2-12-79; 8:45 am]

[6320-01-M]

SUBCHAPTER B—PROCEDURAL REGULATION

[Regulation PR-194; Amendment No. 52; Docket 33113]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Change in Deadlines for Complaints Seeking Suspension of Tariffs

FEBRUARY 7, 1979.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule changes the deadlines for complaints seeking suspension of tariffs and for answers to those complaints. Complaints against tariffs are due ten days after the issued date on the tariff and answers are due six working days after the complaint is filed. A full explanation of the Board's action is set out in ER-1104, in this issue of the FEDERAL REGISTER.

DATES: Adopted: February 7, 1979. Effective: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Mark S. Kahan or John Freeman, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428: (202) 673-5205/673-5793.

Accordingly, the Civil Aeronautics Board amends Part 302 of its Procedural Regulations (14 CFR Part 302) as follows:

Section 302.505 is amended to read as follows:

§ 302.505 Complaints requesting suspension of tariffs-answers to such complaints.

* * * * *

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 1002(j) of the Act, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the Board and to the carrier against whose tariff provision the complaint is made. Such a telegraphic complaint shall state the grounds relied upon, and must immediately be confirmed by complaint filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) workings days after the complaint is filed.

(Sections 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C.A. 1324, 1373, 1482, as amended.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4756 Filed 2-12-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[EDR-371, PDR-61, Docket 33113, dated February 7, 1979]

[14 CFR Parts 221 and 302]

CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS; RULES OF PRACTICES IN ECONOMIC PROCEEDINGS

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rule.

SUMMARY: The Board is issuing today (ER-1104 and PR-194) rules on the statutory notice required for filing tariffs, and deadlines for complaints and answers regarding suspension of tariffs. (See FR Doc. 79-4759 and 79-4756 published in this separate Part). Although they are effective immediately, the Board hereby invites comments on those rules and will consider revising them on the basis of information and arguments sumitted by all interested persons.

DATES: Comments by: April 16, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

FOR FURTHER INFORMATION CONTACT:

Mark S. Kahan, or John Freeman, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5205, (202) 673-5792.

(Section 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C.A. 1324, 1373, 1482, as amended.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4760 Filed 2-12-79; 8:45 am]

Federal Register

TUESDAY, FEBRUARY 13, 1979

PART VII

COUNCIL ON WAGE AND PRICE STABILITY

■

MODIFIED PRICE STANDARDS FOR MEDICAL, DENTAL, OTHER INSURANCE PROVIDERS, AND FOR PETROLEUM REFINERS; CHANGE IN PERCENTAGE MARGIN STANDARD FOR WHOLESALE AND RETAIL TRADE AND REPORTING PROCEDURES FOR INSURANCE COMPANIES AND PETROLEUM REFINERS

[3175-01-M]

Title 6—Economic Stabilization

CHAPTER VII—COUNCIL ON WAGE AND PRICE STABILITY

PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

Modified Price Standards for Medical and Dental and for Other Insurance Providers

AGENCY: Council on Wage and Price Stability.

ACTION: Final standards for medical and dental and for other insurance providers.

SUMMARY: The Council has determined that considerations particular to the insurance industry merit adopting modified price standards for providers of medical and dental and of other forms of insurance.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Zachary Dyckman, Office of Price Monitoring (202/456-6475), or Sandra Sherman (202/456-6286), Office of General Counsel, Council on Wage and Price Stability, 726 Jackson Place, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: The two new standards issued today are 705C-5, "Price Standard for Medical and Dental Insurance Providers", and 705C-6, "Price Standard for Providers of Insurance other than Medical and Dental Insurance". They reflect consultations with all aspects of the insurance industry, including State regulatory authorities, and are intended to reduce the acceleration of premium costs without threatening the financial viability of insurance providers.

I. Medical and Dental Insurance

A special standard has been developed for medical and dental insurance. The standard applies to "inflation trend factors", which are numerical multipliers used in the computation of premiums. These factors are used to incorporate expected increases in claims costs due to growth in prices and utilization of health services into the computation of premium rates.

Reasons for Special Standards

(A) *Greater Deceleration.* Premium rate increases are mainly a reflection of growth in claims costs, which in turn reflect changes in prices and utilization of health care services. Health care costs have been rising faster than inflation rates in other sectors in recent years. However, the Administration has announced a hospital cost containment program with the goal of limiting hospital expenditure growth to a 9.7 percent annual increase. In addition, the Council's professional fee standard (705C-3) is applicable to medical and dental services. Thus, it is anticipated that costs of health care services will exhibit greater deceleration than in other sectors of the economy. The standard is designed to achieve decleration of inflation trend factors by approximately 15 percent.

The standard imposes a degree of deceleration on individual insurance plans that varies with the magnitude of the base period inflation trend factor. This reflects the assumption that deceleration should, and can, be greater where medical care costs have been increasing more rapidly.

(B) *Uniqueness of Premiums for Individual Policies.* Most medical and dental insurance is sold on a group basis, with premiums typically based on the claims experience of the previous period. Because claims experience differs according to the group or individual covered, and because coverage or level of benefits may change from one policy period to the next, premiums *per se* cannot practicably be addressed in a price deceleration standard. Accordingly, the standard does not apply directly to premiums, but rather to the inflation trend factors used in setting premiums.

Other Features of the Standard

An alternative profit-margin limitation is available to insurers who provide medical and dental insurance if they can demonstrate, on the basis of actual claims data, a deterioration in the ratio of claims to premiums or a likelihood of negative profit for the year.

The standards apply to all policies for which premiums are quoted or announced after February 15, or which are issued or renewed on or after April 1, 1979.

Health Maintenance Organizations (HMO's) are expected to achieve deceleration in their premium increases because of compliance with the pay standard and, where applicable, with the Council's professional fee standard and the Administration's hospital-expenditure-limitation goal. HMO's embody an incentive structure which, to a greater degree than the dominant system of fee-for-service physicians and independent hospitals, rewards cost consciousness and discourages excess utilization. Accordingly, the standard for medical and dental insurance providers need not be applied by HMO's.

II. Providers of Insurance Other Than Medical and Dental

A price standard for providers of insurance other than medical and dental is necessary so that the Council can adapt its general price standard to the reporting requirements of the States and, thereby, avoid imposing redundant reporting burdens on the affected companies. In addition, the industry derives the major share of its profit from investment income, and it was necessary that the profit margin limitation as applied to the industry take this into account.

This modified price standard covers most insurance other than medical and dental insurance. This includes, but is not limited to, automobile, homeowner, and other common lines of property and liability insurance.

Several lines of insurance fall under exclusions listed in 705A-3. Negotiated commercial insurance coverages with annual premiums per contract of $100,000 or more, reinsurance, ocean marine insurance and inland marine insurance are each custom products, often competitively bid as part of international markets. Life insurance, including pensions, annuities and disability insurance are also excluded. There is great difficulty in defining a meaningful price for these products because of changes in life expectancy, which change payment flows under the policies and basically change the nature of the product. In the case of disability insurance, claims experience is tied heavily to business cycle developments, and premium fluctuations for this insurance, therefore, are not primarily related to rates of inflation.

The modified standard permits the general price deceleration standard to be applied on any basis permitted by the definition of "company" in 705D, with appropriate exclusions. If a company experiences uncontrollable price increases, and cannot, therefore, comply with the price-deceleration standard, it may comply with the profit-margin limitation, as modified in 705C-6(c). Once a company applies the profit-margin limitation to its nonmedical/dental insurance business, then all such business written by its affiliated companies will be subject to that limitation.

The major changes in the general profit margin limitation are the inclusion of investment income, the application of statutory reporting terms required by State authorities, and the use of calendar instead of fiscal (other than calendar) years. Profit from the excluded lines of insurance, mentioned above, are included when the profit-margin limitation is applied.

The standards will be monitored by the Council, with the help of the State insurance commissioners under a plan

adopted by the National Association of Insurance Commissioners.

Reporting requests under these standards are provided in an accompanying addition to the Council's procedural rules.

While these changes are effective immediately, the Council will accept comments on them through March 9, 1979. Comment should be addressed to Sandra Sherman at the address given above. In addition, notwithstanding the effective date, these standards should be applied throughout a company's program year.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904, note); E.O. 12092.)

In consideration of the foregoing, Sections 705C-5 and 705C-6 are added to the appendix to Part 705 of Chapter VII, Title 6 of the Code of Federal Regulations to read as follows.

Issued in Washington, D.C., February 8, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

1. New Sections 705C-5 and 705C-6 are added to the appendix to Part 705 to read as follows:

* * * * *

705C-5 *Price Standard for Medical and Dental Insurance Providers.*

(a)(1)(i) *Standard.* The price standard for medical and dental insurance providers is based on a percentage deceleration in the inflation trend factors used in determining premium rates. The standards apply to all policies for which premiums are quoted or announced after February 15, 1979, or which are issued or renewed on or after April 1, 1979.

(ii) Notwithstanding the definition of "company" in 705D, a firm should separately identify (A) Medical and dental insurance, (B) insurance other than medical and dental insurance, and (C) all other lines of business.

(2) To be in compliance with the standard, the revenue weighted average of the inflation trend factors (or each of the inflation trend factors) should be no more than:

(i) 95 percent of the base period inflation trend factor, if the base-period factor is less than 7 percent, or

(ii) 6.65 percent plus 75 percent of the amount by which the base-period inflation trend factor exceeds 7 percent, if the base-period factor is 7 percent or more.

(b) For purposes of paragraph (a)(2):

(1) The inflation trend factors are the numerical factors, used in determining medical and dental insurance premiums, that reflect expected increases in claims costs due to increases in the prices of health services and in utilization of such services, net of the effect of benefit changes;

(2) Base-period inflation trend factors may be computed in one of two ways: (i) The average value of inflation trend factors in use on April 1, July 1, and October 1, 1978; or (ii) the percentage increase (net of the effect of benefit changes) of per capita (insured unit) claims cost for the most recent 12-month period for which data are available, relative to costs for the corresponding period one year earlier;

(3) If a company can separate the price and utilization components of the base-period inflation factors and the utilization component is negative, the base period inflation trend factors may be computed under the assumption that the utilization component is zero.

(c) *Profit-Margin Limitation.* If a company's loss ratio (i.e., the ratio of claims to premiums), based on at least three months' medical and dental claims experience during calendar 1979, exceeds that of the same period during 1978 by 2 percentage points or more, or the company can show that it will have negative profits for calendar 1979, the company need only comply with the Profit-Margin Limitation in 705A-6 and should use the following definitions:

(1) A program year of calendar 1979, and a base year of calendar 1978;

(2) The relevant years for 705A-6(a)(1)(i) are calendar 1976, 1977, and 1978;

(3) Investment income is included in the definition of profit; and

(4) The physical volume adjustment is the ratio of program-year premiums at 1978 rate levels to 1978 premiums.

705C-6 *Price Standard for Providers of Insurance Other Than Medical and Dental Insurance.*

(a)(1) The price standard for companies providing insurance other than medical and dental insurance is the price deceleration standard in 705A-2, except that, if a company experiences uncontrollable cost increases, it should comply with the profit-margin limitation in 705A-6, subject to the provisions of paragraph (b) of this section.

(2) Notwithstanding subparagraph (1), life insurance, including pensions, annuities, and disability insurance, should not be included in the computation of the price deceleration standard.

(b)(1) *Profit Margin Limitation.* If, in accordance with paragraph (a), an insurance company is complying with the profit margin limitation, it should use the following definitions;

(i) A program year of calendar 1979, and a base year of calendar 1978;

(ii) For purposes of 705A-6(a)(1)(i), the relevant years are calendar 1976, 1977, and 1978;

(iii) The physical volume adjustment is the ratio of program year premiums at 1978 rate levels to 1978 premiums; and

(iv) Investment income is included in the definition of profits.

(2) Notwithstanding the definition of "company" in 705D, firms should separately identify (i) medical and dental insurance, (ii) insurance other than medical and dental insurance, and (iii) all other lines of business. If any firm providing insurance specified in clause (ii) applies the profit margin limitation, and is affiliated with other firms providing such insurance, all the affiliated firms should comply with the profit margin limitation.

(3)(i) For companies providing Property and Casualty Insurance, the profit margin is calculated so that the numerator is "net income, after dividends to policy holders", as reported at line 18B of the Property and Casualty annual report required for such firms by State insurance departments, and the denominator is "net direct written premiums".

(ii) Where life insurance companies comply with the profit margin limitation, the numerator (profit) is the sum of "net gain from operations after dividends to policy holders", line 32A (less income from medical and dental insurance premiums) from the Summary of Operations, plus "net realized capital gains or losses on assets disposed of during the year", entry 1, line 11, Exhibit 4, both of which are included in the Life and Accident and Health annual report; this report is required by State insurance departments. Premiums for life insurance are the denominator.

(iii) Companies providing other lines of insurance, and filing comparable annual statements with State commissions, should use entries analogous to those specified in clauses (i) or (ii).

(c) *Insurance Brokerage.* Revenues of an insurance brokerage company are in compliance with the price deceleration standard if the average commission rate on which they are based does not increase in 1979.

2. Section III of the cumulative Questions and Answers issued by the Council at 44 FR 5362 (January 25, 1979) is amended by adding Question and Answer number 8 to read as follows:

Q.8 How is the "average" in "average value of inflation trend factors in use on April 1, July 1, and October 1, 1978" to be computed for purposes of 705C-5(b)(2)?

A. If there is a single company inflation trend factor, the base is the simple average of the trend factors in use as of the three dates, April 1, July 1, and October 1, 1978. If there are multiple inflation trend factors, and the company chooses to compute a revenue-weighted average of them for compliance purposes, then the base-period average is computed by taking a simple average of the revenue-weighted average trend factor computed for each of the three dates. If the company complies with the standard by adjusting separately each of its several trend factors, the base for each separate factor is found by taking the simple average of the three values of each factor as of April 1, July 1, and October 1, 1978.

[FR Doc. 79-4778 Filed 2-12-79; 8:45 am]

[3175-01-M]

PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

Modified Price Standard for Petroleum Refiners

AGENCY: Council on Wage and Price Stability.

ACTION: Modified Price Standard for Petroleum Refiners.

SUMMARY: The Council is adding a new section 705C-7 to its voluntary standards for noninflationary price behavior that permits petroleum refiners to disaggregate for purposes of compliance (1) petroleum refinery operations, (2) crude oil and natural gas production, and (3) all other operations, and to treat them as if they were separate companies. In addition,

it allows a gross margin standard to be applied to the petroleum refinery operations, treated as a separate company.

DATES: Effective date: February 13, 1979. Comments by March 9, 1979.

ADDRESS: Comments should be sent to: Jack E. Triplett, Office of Price Monitoring, Council on Wage and Price Stability, 726 Jackson Place, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Jack E. Triplett, (202) 456-7000.

SUPPLEMENTARY INFORMATION: Under the definition of "company" in Subpart 705D, a petroleum refiner could split off its petroleum refinery operations from its crude oil and natural gas production only if it had a historical practice of doing so and had accounting records that permitted an allocation of costs. In many instances, petroleum refiners with integrated petroleum production and refinery operations would be unable, under the Council's standards, to separate petroleum refineries from other operations.

However, prices for domestic crude oil and natural gas production are regulated by the Department of Energy, and imported petroleum prices are set by the Organization of Petroleum Exporting Countries (OPEC). This means that prices of crude oil and natural gas should logically be considered separately from prices of "downstream" products under the Council's price standard.

The modified price standard for petroleum refiners allows for the separation of the firm into three units: (1) Petroleum refinery operations, (2) crude oil and natural gas production, and (3) all other operations and the treatment of these entities as separate companies. In addition, the standard gives guidance on the allocation of indirect costs among disaggregated entities. Finally, the standard provides, for petroleum refinery operations, a gross-margin standard similar to the one available for food manufacturing and processing. This standard allows for the passthrough of crude oil costs on a dollar-for-dollar basis but maintains a limitation on the growth in the gross margin.

While this standard is effective immediately, the Council will consider comments on it. Comments should be sent to the above address by March 9, 1979. In addition, notwithstanding the effective date, these standards should be applied throughout a company's program year.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note); E.O. 12092.)

In consideration of the foregoing, Section 705C-7 is added to the Appendix to Part 705 of Chapter VII, Title 6 of the Code of Federal Regulations, to read as follows.

Issued in Washington, D.C., February 8, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

A new 705C-7 is added to the Appendix to Part 705 to read as follows:

705C-7 MODIFIED PRICE STANDARD FOR PETROLEUM REFINERS

(a)(1) *Standard.* A gross margin standard is available for petroleum refiners as an alternative to the price deceleration standard of 705A-2.

(2) *Definitions.* (i) The definition of "petroleum refiners" corresponds to the definition of "refiners" contained in § 212.31 of Department of Energy regulations, 10 CFR 212.31 (in brief, a firm which refines, blends, or substantially changes crude oil and certain petroleum products, and sells its output to resellers, retailers, or ultimate consumers).

(ii) Notwithstanding the definition of "company" in 705D, petroleum refiners are permitted to disaggregate into (1) petroleum refinery operations, (2) crude oil and natural gas production, and (3) all other operations, as if they were separate companies. Thus, a firm which engages in petroleum refining operations meeting the definition of a petroleum refiner, may split its overall operations into three separate companies: Crude oil and natural gas production to the point of first sale or transfer; petroleum refinery operations (including distribution and retailing of petroleum products, but excluding manufacture and distribution of petrochemicals); and all other operations (including petrochemicals, if any).

(iii) For petroleum refinery operations, the gross margin is equal to net sales (gross sales adjusted for discounts, rebates and other allowances) less the cost of petroleum, petroleum products, natural gas, natural gas liquids, and natural gas liquid products used in refinery operations. However, if there are changes in the input mix (for example, a shift to greater utilization of crude and away from blends), the gross margin must be adjusted to remove the effects of changes in the mix of inputs. The gross margin for the petroleum refinery operations company may be computed after adjustment for changes in the product mix of sales, provided that such adjustments are consistently applied for the base and program periods.

(b) *Alternative Gross Margin Standard.* (1) When a petroleum refiner elects to report its petroleum refinery operations as a separate company, this company satisfies the gross margin standard if the rate of increase in its gross margin (defined in (a)(2)(iii) of this section) between the base quarter (the last complete calendar or fiscal quarter ending prior to October 2, 1978) and the corresponding quarter of 1979 does not exceed 6.5 percent, plus any positive percentage growth in physical volume over the same period.

(2) Physical volume increases to be used in justifying increases in gross margins may be computed by deflation of revenues using a measure of price increase as the deflator, or by computing changes in barrels sold when such barrels are revenue weighted by major product categories.

(c) *Application of the Profit Margin Limitation.* The Council recognizes that the revised definition of "company," in paragraph (a)(2)(ii) of this section, may make it difficult to allocate some indirect costs among the separate companies. Firms should follow generally accepted accounting practices and procedures, allocating all costs to the respective separate companies for which they have historically made these allocations. All other indirect costs (for example, unallocated corporate overhead expenses) may be allocated between the petroleum refinery operations and other companies in any reasonable manner, so long as it is done consistently in the base and program periods (the Council suggests a simple allocation of these other costs to the company, other than the crude and natural gas production company, having the largest sales dollar volume).

[FR Doc. 79-4779 Filed 2-12-79; 8:45 am]

[3175-01-M]

PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

Change in Percentage Margin Standard for Wholesale and Retail Trade

AGENCY: Council on Wage and Price Stability.

ACTION: Change in Modified Price Standard.

SUMMARY: The Council is amending the voluntary standard for noninflationary price behavior by changing the percentage margin standard for wholesale and retail trade. Under this change, if the growth in a company's average percentage gross margin between the base year and the program year is no greater than its margin trend, it will satisfy the standard. It will no longer be necessary to deduct 0.5 percentage points from the margin trend to be in compliance.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Hiemstra, Office of Price Monitoring, Council on Wage and Price Stability, 726 Jackson Place, NW., Washington, D.C. 20506 (202/456-2601).

SUPPLEMENTARY INFORMATION: The Modified Price Standards for Selected Industries, 6 CFR Part 705C, provide at Section 705C-2(c)(1) that a company engaged in wholesale or retail trade may satisfy the percentage margin standard if "the growth in its average percentage gross margin between the base year and the program year is no greater than its margin trend *minus 0.5 percentage points*" (emphasis supplied). The Council is deleting the emphasized words in re-

sponse to comments that deceleration of the percentage margin trend would require extraordinary deceleration of wholesale and retail prices. The comments pointed out that if retail and wholesale prices, and the gross margin all decelerate by 0.5 percentage point, the margin trend will remain constant—i.e., it will not decelerate. Thus, a standard calling for a constant margin trend is consistent with the notion of price deceleration.

In order to reflect this change in the Questions and Answers issued by the Council, this notice also contains a revision in the answer to Question III.A.5, in 43 FR 60782 (December 28, 1978), regarding how the allowable percentage gross margin for a retail company is computed.

In addition, notwithstanding the effective date, the standard, as amended, should be applied throughout a company's program year.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note), and E.O. 12092)

In accordance with the foregoing, Chapter VII of Title 6 of the code of Federal Regulations is amended in Section 705C-2, and the Answer to Question III.A.5 is revised, to read as follows.

Issued in Washington, February 8, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

1. In the appendix to Part 705, section 705C-2 is amended in subparagraph (1) of paragraph (c) to read as follows:

705C-2 · MARGIN STANDARDS FOR WHOLESALE AND RETAIL TRADE AND FOR FOOD MANUFACTURING AND PROCESSING.

* * * * *

(c) * * *

(1) The growth in its average percentage gross margin between the base year and the program year is no greater than its margin trend, or

* * * * *

2. The answer to Question III.A.5 is revised to read as follows:

A. Assume the percentage gross margin for the four quarters prior to October 2, 1978, was 44 percent, and 40 percent for the corresponding four quarters prior to October 2, 1976. The 2-year overall increase is 10 percent and the annual average rate of change is 4.88 percent. The allowable percentage margin in the program year is 46.15 percent (44 x 1.0488).

[FR Doc. 79-4780 Filed 2-12-79; 8:45 am]

[3175-01-M]

PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

Correction in Numbering of Questions and Answers

AGENCY: Council on Wage and Price Stability.

ACTION: Correction in Numbering of Questions and Answers.

SUMMARY: Certain Questions and Answers (Q's and A's) issued on January 25, 1979, are being renumbered to correct an inadvertent misnumbering.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Sandra Sherman, Office of General Counsel, Council of Wage and Price Stability, 726 Jackson Place, NW., Washington, D.C. 20506 (202/456-6286).

SUPPLEMENTARY INFORMATION: On January 25, 1979, the Council published Q's and A's relating to its Voluntary Standards for Noninflationary Pay and Price Behavior (44 FR 5362). These Q's and A's were numbered in sequence with those previously published. Inadvertently, Q's and A's given in Section I.A. (The Price Standards—Coverage) were misnumbered 24 through 34, giving them the same numbers as some already published. In order to correct the sequence, the Q's and A's in this section are being redesignated 35 through 45.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904, note); E.O. 12092)

In consideration of the foregoing, Questions and Answers 24 through 39 in Section I.A. of the cumulative Questions and Answers published by the Council, are redesignated respectively, 35 through 45.

Issued in Washington, D.C., February 8, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

[FR Doc. 79-4781 Filed 2-12-79; 8:45 am]

[3175-01-M]

PART 706—SPECIAL PROCEDURAL RULES

Reporting Procedures for Insurance Companies

AGENCY: Council on Wage and Price Stability.

ACTION: Final rule.

SUMMARY: The Council is adopting a special reporting provision for insurance companies so that the reports requested from such companies will be consistent with the modified price standards which apply to such companies.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Sandra Sherman, Office of General Counsel, Council on Wage and Price Stability, 726 Jackson Place, NW., Washington, D.C. 20506, (202) 456-6286.

SUPPLEMENTARY INFORMATION: Sections 705C-5 and 705C-6, issued today, contain modified price standards for providers of medical and dental, and of other types of insurance. These standards specify different methods of calculating both price deceleration and the profit margin limitation and, accordingly, the reporting provisions of Part 706 do not, in every respect, request data which would be generated by these calculations. In addition, companies providing insurance are permitted to separate their operations into medical/dental insurance, non-medical/dental insurance, and all other lines of business, without complying with the definition of "company" in 705D. In order to conform the Council's request for data to these modified standards, Subpart B of Part 706, "Reports and Notifications", is being amended by adding a new § 706.26, which contains reporting procedures appropriate for insurance companies. It should be noted that the changes in reporting apply only with respect to the Price Standard; reporting with respect to wages remains the same.

In brief, organizational data for all insurance firms (with $250 million or more in annual revenues) is requested, except that insurance companies need not show that the separation of their insurance business from their other lines of business complies with the definition of "company" in 705D. Firms that write only lines of insurance excluded from company average price calculations under 705A-3, or life insurance, are not requested to report pricing data under § 706.22. Firms not in this category are asked to provide modified pricing and profit margin data (for their nonmedical and dental insurance) if they have revenues of $500 million or more. With respect to medical and dental insurance, companies are asked to report inflation trend factors instead of data under § 706.22, and to provide modified profit margin data if § 706.23 applies. Also, where companies have premium revenues from medical and dental insurance of at least $50 million in 1978, they

should, when the Commissioner of Domicile does not monitor compliance with the standards in accordance with the program of the National Association of Insurance Commissioners (NAIC), furnish their inflation trend factors for 1978.

The reporting date for insurance companies, with respect to price data, has been changed from February 15, 1979, to March 5, 1979, to allow companies to prepare the requested reports on the basis of the modified price standard. Wage data, while technically due earlier, can be incorporated in the March 5 report if this is more convenient.

These standards will be monitored with the help of the State insurance commissioners under a plan adopted by the NAIC's convention in December 1978. The Council will also independently monitor compliance with the standards as it deems necessary.

While these changes are effective immediately, the Council will accept comments on them through March 9, 1979. The comments should be sent to Ms. Sandra Sherman at the address given above.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904, note); E.O. 12092.)

In consideration of the foregoing, Part 706 of Chapter VII, Title 6 of the Code of Federal Regulations, is amended by adding a new § 706.26 to Subpart B—Reports and Notifications to read as follows.

Issued in Washington, D.C., February 8, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

Part 706 is amended by adding a new § 706.26 to Subpart B—Reports and Notifications, as follows:

§ 706.26 Compliance with the price standard by insurance companies.

(a) Notwithstanding § 706.21(c), a firm providing insurance is not requested to show that the separation of medical and dental insurance and/or non-medical and dental insurance from all other lines of business complies with the definition of "company" in 705D. A firm should provide documentation signed by the Chief Executive Officer in support of the separation which it has made. The provisions of § 706.21(c) do apply to a firms separate treatment of companies which do not provide insurance.

(b) With respect to those lines of insurance other than medical and dental insurance, a company:

(1)(i) Is not requested to file reports specified in § 706.22 if it writes only life insurance or other insurance entirely in areas excluded from company price calculations under 705A-3; but

(ii) If it is not covered by subparagraph (1)(i) of this section, should, when filing reports under § 706.22, delete data requested under § 706.22(d)(1) and substitute therefor its total revenues for calendar year 1978, and total revenues from life insurance or other lines of insurance excluded from company price calculations under 705A-3 for 1978, reported separately as provided in § 706.22(d)(1);

(2) When providing data under § 706.23, should use the definition of profit margin in 705C-6, and the best two out of the calendar years 1976, 1977, and 1978.

(c) With respect to medical and dental insurance, a company:

(1) Need not file reports under § 706.22, but should furnish its inflation trend factors for 1978, and

(2) When furnishing data under § 706.23, should use the definition of profit margin in 705C-5, and the best two out of the calendar years 1976, 1977, and 1978;

(3) With revenues from medical and dental premiums of at least $50 million in 1978 should, when the Commissioner of Domicile does not monitor compliance with the standards in accordance with the program of the National Association of Insurance Commissioners, furnish its inflation trend factores for 1978.

(d) Reports made pursuant to this section should be filed with the Council by March 5, 1979.

[FR Doc. 79-4782 Filed 2-12-79; 8:45 am]

[3175-01-M]

PART 706—SPECIAL PROCEDURAL RULES

Reporting Procedures for Petroleum Refiners

AGENCY: Council on Wage and Price Stability.

ACTION: Final rule.

SUMMARY: The Council is adopting a special reporting provision for petroleum refiners so that the reports requested from such companies will be consistent with the modified price standards which apply to such companies.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Sandra Sherman, Office of General Counsel, Council on Wage and Price Stability, 726 Jackson Place, N.W., Washington, D.C., 20506, (202) 456-6286.

SUPPLEMENTARY INFORMATION: Section 705C-7 contains a modified price standard for petroleum refiners. Under this standard, companies which refines petroleum can separate their operations into three units—(1) petroleum refining, (2) crude oil and natural gas production, and (3) all other operations—and treat these entities as separate companies notwithstanding the definition of "company" in Section 705D. In addition, a gross margin standard may be applied to petroleum refining operations as a alternative to the price deceleration standard. Subpart B of Part 706, "Reports and Notifications, " is being amended so that the reports requested from petroleum refiners will be consistent with these changes.

Under these amendments, a new paragraph (e) is being added to § 706.21, "Company Organization for Purposes of Compliance," which provides that petroleum refiners need not show, as requested in paragraph (c) of that section, that the separation of these petroleum refining operations and crude oil and natural gas production, from all other operations, complies with the 705D definition of "company." Rather, refiners are asked to provide documentation in support of the separate reporting designations which they have made. Paragraph (c) would still apply to a refiner's separate treatment of companies which are not engaged in petroleum refining or production. In addition, paragraph (c) of § 706.22 is amended to request base-quarter gross margin data from petroleum refiners electing to use that option.

It should be noted that the changes in reporting apply only with respect to the price standard; reporting with respect to pay remains the same. In order to allow companies to prepare the requested reports on the basis of the modified standard, the reporting date for petroleum refiners is changed from February 15, 1979, to March 9, 1979. Pay data can be incorporated in the March 9 report.

While these changes are effective immediately, the Council will accept comments on them through March 9, 1979. The comments should be sent to Ms. Sandra Sherman at the address given above.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904, note; E.O. 12092.)

Chapter VII, Title 6 of the Code of Federal Regulations, in amended by adding new provisions to §§ 706.21 and 706.22 to Subpart B—Reports and Notifications to read as follows.

Issued in Washington, D.C., February 12, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

1. § 706.21 is amended by adding a new paragraph (e) to read as follows:

§ 706.21 Company organization for purposes of compliance.

* * * * *

(e) Notwithstanding paragraph (c), a petroleum refiner, as defined in section 705C-7, is not requested to show that the separation of its petroleum refinery operations and crude oil and natural gas production, from all other operations, complies with the definition of "company" in 705D. A refiner should provide documentation, signed by its Chief Executive Officer, in support of the separation which it has made. The provisions of paragraph (c) do apply to a refiner's separate treatment of companies which are not engaged in petroleum refining or crude oil or natural gas production.

2. § 706.22 is amended in subparagraph (1) of paragraph (c) to read as follows:

§ 706.22 Price or margin data.

* * * * *

(c) * * *

(1) for companies in food manufacturing and food processing, and for petroleum refiners, the base-quarter gross margin, as defined, respectively, in sections 705C-2(b) and (d), and 705C-7(a)(2)(iii) and (b)(1).

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